TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 223.

CATHARINE CONLEY, APPELLANT,

vs.

RACHEL D. NAILOR, WASHINGTON T. NAILOR, MATTHEW TRIMBLE, AND LIZZIE TRIMBLE, HIS WIFE, JAMES W. CLARKE, AND FRANCES CLARKE, HIS WIFE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 8, 1883.

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1885

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Bill of Complaint and Affidavits.* (*Filed Feb.* 27, 1879.)

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR, WASHINGTON T. NAILOR, MATTHEW Trimble, and LIZZIE TRIMBLE, his wife, JAMES W. Clarke, and FRANCES M. CLARKE, his wife, } No. 6658.
vs.
CATHARINE CONLEY.

To the honorable the judges of the Supreme Court of the District of Columbia, in equity sitting:

The complainants respectfully show unto your honors as follows, viz:

1. That they are all residents of the District of Columbia, and city of Washington, except the said James W. Clarke and Frances, his wife, who are residents of the State of Texas.

2 2. That the defendant is also a resident of the District of Columbia, and city of Washington.

3. That the complainant, Rachel D. Nailor, is the widow of the late Allison Nailor, senior, now deceased; and the complainants, Washington T. Nailor, Lizzie Trimble, and Frances M. Clarke, are the children and heirs-at-law of the said Allison Nailor, senior.

4. That the said Allison Nailor, senior, who departed this life on the 6th day of January, 1879, was, during his life, the owner of considerable real estate in the city of Washington, and District of Columbia, consisting of various houses and lots in said city, and also of several valuable farms in the county of Montgomery, and

3 State of Maryland, and at one time, about the year 1870, the real estate so owned and possessed by him was worth [the] sum [of] $150,000.00, besides considerable personal estate owned by him. And the said Washington T. Nailor, Lizzie Trimble, Frances M. Clark-, and one Allison Nailor, junior, are the only children and heirs-at-law of the said Allison Nailor, senior.

5. That on or about the 23rd day of April, 1835, the complainant, Rachel was married to the said Allison Nailor, senior, in the said county of Montgomery and State of Maryland, and from that time until the latter part of the year 1870 they lived together as man and wife in the said Montgomery county and in the city of Washington; that the children hereinbefore mentioned are the issue of said

4 marriage; that the said Allison Nailor, senior, with the aid and co-operation of his wife, the complainant, Rachel, accumulated considerable property, raised and educated their children, and made and maintained a comfortable and happy home until the occurrences hereinafter fully set forth.

6. That for some time prior to the year 1871 the said Allison Nailor, senior, had become addicted to the use of liquors, and frequently drank to intoxication and to a degree which impaired his mental faculties and rendered him unfit to properly transact business, and about the first part of the year 1870 formed the acquaintance of and became intimate with the defendant, Catharine Conley,

who, as your complainants believe, with a view to accomplish-
5 ing his ruin and obtaining a portion or all of his estate, exerted herself to acquire an influence and control over him, and in pursuance of this purpose frequently invited and enticed him to her house, which was a disreputable one, and there flattered and entertained him, and frequently plied him with liquors and induced him to drink to intoxication and to indulge in criminal intercourse with her; and so great was the influence and power which she acquired over him in this way that in the latter part of the year 1870 he was induced by her to abandon his home, wife, and family, and from that time until his death he lived with the said Catharine Conley in open and notorious adultery in a house belonging to
6 the said Allison Nailor, senior, No. 227 on 14th street, in the said city of Washington, and she claims during that time to have had four children by him, all of whom are now dead.

7. That the said Allison Nailor, senior, by the fraudulent practices and undue influence of the said Catharine Conley over him, was induced to and did execute the following papers purporting to be deeds when he was incompetent to do so, as hereinafter more fully set forth, viz: A deed bearing date on the 27th day of November, 1872, purporting to convey to the said Cathraine Conley a certain part of lot No. 26 in square 231 in said city, more fully described in said deed, together with the improvements thereon, in trust
7 to take and apply the rents and profits thereof to the maintenance and education of one of the children mentioned in the last paragraph, called in said deed Willie Earnest Nailor, and providing that when he arrived at the age of twenty-one years the trust should cease, and he become the owner of the legal title in fee-simple absolute, or in case he should die before arriving at full age the property was to become absolutely vested in the said Catharine Conley in fee-simple. Said deed was recorded in the land records of the District of Columbia on the 27th day of May, 1873, and a certified copy thereof is filed herewith as an exhibit, and marked "A" and made part of this bill.

8 8. Also on the 19th day of March, 1878, he was induced to make another deed to her, pretending thereby to convey lot 11, in square 258, except the portion thereof theretofore sold to J. P. Miller; also lot No. 12, in said square No. 258, except the portion thereof conveyed to Sarah Huntress; also parts of lots numbered 2 and 20, in square 293, with all the improvements and appurtenances, in trust for another child mentioned in the fifth paragraph of this bill, who is called in said deed Mary Edna Nailor, with power to apply the rents, issues, and profits of said real estate to the support and education of said child until she should arrive to the age of eighteen years, when the trust was to determine and
9 the said child to become the absolute owner of the property in fee-simple; but if said child should die before arriving at said age, then the said real estate was to become the absolute property of the said Catharine Conley. Said last-mentioned deed was recorded in the land records of the said district on the 2nd day of

April, 1878, and a certified copy thereof is filed herewith, marked Exhibit " B," and prayed to be read as part of this bill.

9. She also induced and procured the said Allison Nailor, senior, to execute to her a deed dated on the 29th day of March, 1878, for the nominal consideration of five dollars, pretending thereby to convey to her a farm of one hundred acres, more or less, situated in Montgomery county, Maryland, being the farm which was conveyed by Patrick O'Connor to said Nailor, which deed was admitted to record in the land records of Montgomery county, Maryland, on the 5th day of April, 1878, and a certified copy thereof is exhibited herewith as Exhibit "C" and made part of this bill.

She also induced him on the said 29th day of March, 1878, to execute to her a deed for two certain other tracts or parcels of land, situated in the said county of Montgomery, Maryland, one containing one hundred acres, more or less, and known as part of " Friendship Farm," and the other containing thirty acres of woodland, conveyed to the said Allison Nailor, senior, by Horatio Trundle, being a part of McCubbin's farm, and more particularly described in said alleged deed, which was recorded in the land records of said Montgomery county, Maryland, and a certified copy thereof is filed herewith as part of this bill, marked Exhibit " D." Said last-mentioned deed provides that the said Catharine Conley is to hold the said real estate in trust for the use and benefit of the said child called Willie Earnest Nailor, and apply the rents and profits thereof to his support and education, and when he should arrive at the age of twenty-one years the trust was to cease, and he become the absolute owner thereof in fee-simple, but if he should die before arriving at said age, or without having disposed of said property, then the same was to become the absolute property of the said Catharine Conley.

10. The complainants further show unto your honors that there was no good or valuable consideration for the making of said deeds; that no money or other valuable thing passed between the parties thereto as a consideration for the making thereof, and that no relations existed between the parties thereto to support such attempted conveyances; that the only consideration for them, and each of them, was the illegal and criminal intercourse between the said Allison Nailor, senior, and the said Catharine Conley, and that such consideration was illegal, alike contrary to public policy and common decency, and renders said deeds void.

11. Your orators also allege and show that the said Catharine Conley procured each of the said deeds to be made to her by said Allison Nailor, senior, by fraud, and by exercising an undue influence over him, and that at the time he made them, and each of them, he was demented and insane, incapacitated, and incompetent to make said deeds, and was induced to make them by reason of fraudulent practises and under influence of said Catharine, and that said attempted conveyances are not his deeds and void; that the said Catharine Conley having, as hereinbefore set forth, induced the said Allison Nailor, senior, to leave his family and live and cohabit

with her the last eight years of his life, during all that time,
14 wickedly and premeditatedly, and with the intention of defrauding him and cheating these complainants out of their inheritance, encouraged, cultivated, and nursed his intemperate habits until he had acquired an insatiable appetite for intoxicating drink, and rendered him an habitual drunkard, which she induced him to carry to such an extent that during the last six or seven years of his life he was scarcely ever sober or free from the influence of intoxicating liquors. And at the same time the said Catharine acquired and had an unbounded control over him by virtue of his continued sexual indulgences with her, which she also induced
15 and encouraged for the purpose of obtaining a more complete control over him. From the effects of such excessive drinking and habitual drunken-ess and such excessive sexual intercourse with her his physical strength and mental capacity rapidly waned, and he soon became enfeebled in body and benumbed in intel-ect to such an extent that he was demented and insane and not capable of transacting his ordinaty business, such as collecting his rents and looking after his estate, but turned that over, soon after he went to live with said Catharine, first to one and then the other of his sons, with whom she induced him to quarrel
16 and have trouble. In fact he soon became so incapacitated and under the influence of this wicked and designing woman to such an extent that she secured and retained entire control of him from the time he went to live with her until death happily released him from her cruel toils, and when he was so incapacitated, demented, and insane and under her influence, and while he was intoxicated and when he was unable to comprehend the nature or effect of these instruments, at her dictation and by her connivance and procurement he executed the alleged conveyances hereinbefore mentioned, and they are her acts and
17 doings and not his, nor binding upon him or his legal representatives, as your orators are advised and believe.

12. The complainants further show unto your honors that in June, 1873, after the said Allison Nailor, senior, had abandoned his family and lived with the said Catharine Conley for more than two years, the complainant, Rachel D. Nailor, filed in this honorable court her bill for divorce from bed and board from the said Allison, on the ground of wilful abandonment and adultery, and for alimony, which was decreed her, and which decree remained in force until the death of the said Allison, and they pray that the papers and proceedings in said cause may be read and considered
18 herewith. And they allege that the defence of the said Allison in that suit, and his conduct therein, showing alike a total want of respect for the said Rachel and their children, a disregard for the truth, and a contempt for the authority of the court, were inspired by the said Catharine Conley, and were the result of her influence and control over him. The allegations and proof in that cause, as they are advised and believe, would have justified a divorce from the bonds of matrimony between the said Rachel and the said Allison Nailor, senior, but at the special request of the said

Rachel such decree was not pronounced, she and their chil-
19 dren indulging the hope that time and circumstances might destroy the unnatural influence of the said Catherine Conley over him, and restore him to reason and to his family; but the same had by her machinations and evil practices become so deep-seated and entire that it only ended with his life.

13. The complainants further show that the children mentioned in said conveyances, to wit, Willie Earnest Nailor and Mary Edna Nailor, both departed this life in the month of August, 1873, the first without having attained the age of 21 and the latter without having attained the age of 18 years, and neither have left any children. And that the said Catharine Conley,
20 by virtue of the conveyances aforesaid, falsely and fraudulently claims title in fee-simple to each and all the several parcels of property mentioned in said several conveyances. She is now in possession of the parts of lots two and twenty in square 293, embraced in the deed of March 19th, 1878, marked as Exhibit "B," and has been ever since the death of the said Allison Nailor, senior, but is not, nor never has been, in possession of any other part or portion of said real estate. The residue of said real estate is leased to various persons as tenants, to whom it was rented by the said Allison Nailor, senior, or his duly authorized agents, in his life-
21 time, and she has never collected any of the rents and profits of said real estate not in her possession, unless, perhaps, she may have collected some rent from the tenant occupying the premises part of lot 26 in square 231. But she claims the right to the rents of all of said real estate, and has notified the said tenants to pay said rents to her, and not to these complainants, or any of the legal heirs or representatives of the said Allison Nailor, senior.

The complainants further show that the property so fraudulently conveyed to the said Catharine Conley, situated in the city of Washington, is worth not less than from $14,000 to $15,000, and
22 that the property so conveyed to her, situated in Montgomery county, Maryland, is worth not less than from $11,000 to $12,000.

14. The complainants further show that the complainant Rachel D. Nailor is entitled to her dower interest in all the said real estate, as the widow of the said Allison Nailor, senior, and that the complainants Washington T. Nailor, Lizzie, the wife of Matthew Trimble; Frances, the wife of James W. Clark, and Allison Nailor, junior, as the heirs of the said Allison Nailor, senior, are entitled to said real estate in fee-simple, subject to said dower, notwithstanding said fraudulent and void conveyances; but the said Catharine Conley disputes alike the right and title of each and all of them and
23 claims under said conveyances, which, although void, constitute a cloud upon the title of complainants, which it is the province of a court of equity to cancel and remove, as they are advised and believe.

The complainants therefore pray:

1. That the said defendant may be required full, true, and perfect answer to make to this bill and each separate allegation thereof as

fully and specifically as if each separate allegation thereof were here now repeated in the form of interrogatories and she thereunto especially and separately interrogated.

2. That the Court will declare the said two conveyances for the said real estate situated in the city of Washington, and Dis-
24 trict of Columbia, null and void and direct the same to be delivered up and cancelled.

3. That during the pendency of this suit the said Catharine Conley, her servants, agents, and attorneys, may be restrained and enjoined from collecting the rents of the said property, situated in the said city of Washington, from the tenants thereof, and from in any manner whatever interfering with the possession and enjoyment of said property, or the rents and issues thereof, by the complainants, and from selling, conveying, or in anywise encumbering the said property or any part thereof, or attempting to do so, and that upon the final hearing that said injunction may be perpetuated.

25 4. That complainants may have such other, further and general relief as to equity appertains and the nature of the case may require.

And to this end that process may issue against the defendant, requiring her to answer the exigencies of this bill, &c., &c.

RACHEL D. NAILOR.
RACHEL E. TRIMBLE.
M. TRIMBLE.
WASHINGTON T. NAILOR.
FRANCES M. CLARKE.
JAMES W. CLARKE.

DISTRICT OF COLUMBIA, }
County of Washington, } ss:

We and each of [us] do solemnly swear that we have heard read the foregoing bill by us subscribed and know the contents
26 thereof; that the facts therein stated upon our own knowledge are true, and that the facts therein stated upon information and belief we believe to be true.

RACHEL D. NAILOR.
RACHEL E. TRIMBLE.
M. TRIMBLE.
WASHINGTON T. NAILOR.
FRANCES M. CLARKE.
JAMES W. CLARKE.

Subscribed and sworn to before me by all the parties above named, except James W. Clarke and wife, this 18th day of February, 1879.

[SEAL.] ARTHUR BROWNING,
U. S. Commissioner, District of Columbia.

(Filed Feb. 28, 1879.)

27 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR }
vs. } No. —.
CATHARINE CONLEY. }

John H. Clark, being duly sworn according to law, says upon oath that he was very well acquainted with Allison Nailor, senior, during his lifetime, and has known him about twenty years; that the said Allison Nailor, senior, for some time previous to his death, was addicted to the use of strong drink, and frequently became intoxicated; that when under its influence was perfectly crazed and totally unable to transact his ordinary business. This deponent further says that he has been informed and believes that since the said Allison Nailor, senior, left his home and family and went to live with the defendant, Catharine Conley, she has resorted
28 to all means in her power to keep the said Allison Nailor, senior, away from his wife and family, and had complete and perfect control over him in every way, and provided intoxicating liquors for his use, and caused him to drink to greater excess than he otherwise would have done.

JOHN H. CLARK.

Subscribed and sworn to before me this 21st day of February, A. D. 1879.

[SEAL.] ARTHUR BROWNING,
U. S. Commissioner, District of Columbia.

(Filed Feb. 28, 1879.)

DISTRICT OF COLUMBIA, } ss:
County of Washington, }

In the Supreme Court of the District of Columbia.

RACHEL D. NAILOR *et al.* }
vs. } Equity No. —.
CATHARINE CONLEY. }

29 Thomas E. France, Jr., being first duly sworn according to law, says upon oath that he was very well acquainted with Allison Nailor, senior, during his lifetime, and knew him for many years; that during the latter years of his life the said Allison Nailor, senior, was addicted to the frequent use of intoxicating liquors, and when under their influence was very childish and totally unable to transact any business whatever. Deponent further says that since the said Allison Nailor, senior, left his home and family and went to live with the defendant, Catharine Conley, she has exerted herself to keep him away from his wife and family, and had complete control over him in every way, and often furnished the said
30 Allison Nailor, senior, with intoxicating liquors, and caused him to drink to greater excess, as this deponent is informed and believes.

THOMAS E. FRANCE, JR.

Subscribed and sworn to before me this 19th day of February, A. D. 1879.

[SEAL] ARTHUR BROWNING,
U. S. Commissioner, District of Columbia.

(Filed Feb. 28, 1879.)

(Endorsed:) Clerk will please file. W. A. Cook, C. C. Cole, for compl'ts.

EXHIBITS TO BILL.

"*Exhibit A.*" (*Filed Mar.* 18, 1879.)

Recorded May 27th, 1873, 9.20 a. m.

Allison Nailor to Catherine Conley, in trust.

31 This indenture, made this twenty-seventh day of November, in the year of our Lord one thousand eight hundred and seventy-two, by and between Allison Naylor, of the city of Washington, in the District of Columbia, of the first part, and Catherine Conley, of the same place, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, in lawful money of the United States, to him in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and doth by these presents grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part, her heirs and assigns, forever, all that
32 certain piece or parcel of ground situate, lying, and being in the said city of Washington, and known and described as being part of lot numbered twenty-six (26), in square numbered two hundred and thirty-one (231), beginning for the same at the northeast corner of said lot and running thence south with the line of 14th street west fifteen (15) feet; thence west one hundred (100) feet and one-half ($\frac{1}{2}$) inch; thence north fifteen (15) feet to a fifteen (15) feet alley; and thence east with said alley one hundred (100) feet and one-half ($\frac{1}{2}$) inch to the place of beginning, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in anywise appertaining, and all the
33 remainders, reversions, rents, issues, and profits thereof, and all the estate, right title, interest, claim, and demand, either at law or in equity or otherwise however, of the said party of the of the first part, of, in, to, or out of the said piece or parcel of ground and premises; to have and to hold the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, her heirs and assigns, in trust, nevertheless, for the following uses and purposes and none other—that is to say: In trust for the sole and separate use of Willie Ernest Nailor, infant son of the said parties of the first and second parts, to receive the rents, issues, and profits thereof, and to apply the same to the support

and education of the said Willie Ernest Nailor, and upon
34 this further trust, that when the said Willie Ernest Nailor should become twenty-one years, age, that then and in that case this trust shall cease and determine, and the title in fee-simple to the said piece or parcel of ground shall be absolutely in the said Willie Ernest Nailor, his heirs and assigns, forever. And upon this further trust, that should the said Willie Ernest Nailor die before he arrives at the age of twenty-one years, or should die without having disposed of the said piece or parcel of ground, that then, in case of either of said events occurring, the title in fee-simple of the said piece or parcel of ground shall vest absolutely in the said party of the second part, her heirs and assigns, forever.

35 In testimony whereof the said party of the first part hath hereunto set his hand seal this day and year first above written.

ALLISON NAILOR. [SEAL.]

Signed, sealed, and delivered in the presence of—
A. E. L. KEESE.

DISTRICT OF COLUMBIA, *County of Washington,* } *To wit:*

I, A. E. L. Keese, a notary public in and for the District aforesaid, do hereby certify that Allison Nailor, party to a certain deed bearing date on the twenty-seventh day of November, A. D. 1872, and hereto annexed, personally appeared before me, in the District aforesaid, the said Allison Nailor, being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twenty-third day of December, A, D. 1872.

[NOTARIAL SEAL.] A. E. L. KEESE,
Notary Public.

36 EXHIBIT B. (Filed Mar. 18, 1879.)

Recorded April 2, 1878, 9.10.

Allison Nailor, Sr., to Catherine Conley. Deed.

This indenture, made this 29th day of March, in the year of our Lord one thousand eight hundred and seventy-eight, by and between Allison Nailor, senior, of Washington city, District of Columbia, of the first part, and Catherine Conley, of said city and District, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States, to him in hand paid by the said party of the second part at and before
37 the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, aliened, enfeoffed, released, and conveyed, and doth by these presents grant, bargain, and sell, alien, enfeoff, release, and convey, unto the said party of the second part, her heirs and assigns,

forever, all those certain pieces, parcels, and lots of ground situate, lying, and being in Washington city, District of Columbia, and known, designated, and described, as the ground plan or plat of said city as lot numbered eleven (11), in square two hundred and fifty-eight (258), except that portion of said lot heretofore sold and conveyed by said Allison Nailor to one J. P. Miller by deed dated October 1, 1873, and duly recorded in liber 764, folio 370, one of the land records of said District; also all of lot numbered twelve (12),
38 in said square two hundred and fifty-eight (258), except that portion of said lot twelve (12) heretofore conveyed by said Allison Nailor to one Sarah Huntress by deed dated March 15, 1870, and duly recorded in liber 609, folio 367, one of the land records of said district.

Also parts of lots numbered two (2) and twenty (20), in square two hundred and ninety-three (293), being the same property conveyed to said Nailor by deed from William W. Simpson, and duly recorded Liber W. B. 67, folio 254, one of the land records for said district, to which reference is hereby made for a more full and particular description thereof, together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining, and all the
39 remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, either at law or in equity or otherwise however, of the said parties of the first part, of, in, to, or out of the said pieces or parcels of land and premises—

To have and to hold the said pieces or parcels of land and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to her and their sale, use, benefit, and behoof, forever, in trust, nevertheless, for the uses and purposes following, and none other, that is to say: In trust for the sale and separate use of Mary Edna Nailor, infant daughter of said parties of the first and second parts, with full power and authority to said party
40 of the second part to take, demand, and receive the rents, issues, and profits of said land and premises, and to apply the same to the support, maintenance, and education of said Mary Edna Nailor. And upon this further trust, that when said Mary Edna Nailor shall arrive at the age of eighteen years, then and in that event this trust shall cease and determine, and all the right, title, interest, and estate in fee-simple in and to said pieces or parcels of land shall vest absolutely in said Mary Edna Nailor, her heirs and assigns, forever. And upon this further trust, that should said Mary Edna Nailor die before attaining the age of eighteen years as aforesaid, or after attaining said age and becoming vested with
41 the title to said pieces or parcels of land and premises as aforesaid, should said Mary Edna Nailor die without having disposed of said property, or any portion thereof, then upon the happening of either of said contingencies the title in fee-simple to said pieces and parcels of ground shall vest absolutely in said party of the second part, her heirs and assigns, forever, and in the event either of said pieces or parcels of ground shall have been disposed

of by said Mary Edna Nailor, then whatever of said property shall remain undisposed of at the time of the death of said Mary Edna Nailor shall vest in said party of the second part in fee-simple as aforesaid. And said party of the first part, for himself, his
42 heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said party of the second part, her heirs and assigns, that he, the said party of the first part, and his heirs, shall and will warrant and forever defend the said pieces, parcels, or lots of ground and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through him, them, or any of them; and further, that he, the said party of the first part, and his heirs, shall and will at any and all times hereafter, upon the request and at the cost of the said party of the second part, her
43 heirs or assigns, make and execute all such other deed or deeds or other assurances in law for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances unto the said party of the second part, her heirs or assigns, as the said party of the second part, her heirs or assigns, as her or their counsel learned in the law shall advise, devise, or require.

In testimony whereof the said party of the first part hath hereunto set his hand and affixed his seal the day and year first hereinbefore written.

ALLISON NAILOR. [SEAL.]

Signed, sealed, and delivered in the presence of—
N. CALLAN.

44 DISTRICT OF COLUMBIA, } *To wit:*
County of Washington, }

I, Nicholas Callan, a notary public in and for the District of Columbia, do hereby certify that Allison Nailor, senior, party to a certain deed bearing date on the 29th day of March, A. D. 1878, and hereto annexed, personally appeared before me, in said district, the said Allison Nailor, senior, being personally well known to me to be the person who executed the said deed and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 29th day of March, A. D. 1878.

N. CALLAN, [NOTARIAL SEAL.]
Notary Public.

45 "EXHIBIT C." (Filed Mar. 18, 1879.)

At the request of Catharine Conley the following deed of trust was recorded the 5th day of April, 1878, to wit:

This indenture, made this 29th day of March, in the year of our Lord one thousand eight hundred and seventy-eight, by and between Allison Nailor, senior, of Washington city, District of Columbia, of the first part, and Catharine Conley, of said city and District,

of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States, to him in hand — by the said party of the second part at and before the sealing and delivery of these presents,
46 the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, aliened, enfeoffed, released, and conveyed, and doth by these presents grant, bargain, and sell, alien, enfeoff, release, and convey, unto the said party of the second part, her heirs and assigns, forever, all that certain piece or parcel of ground and real estate situate, lying, and being in Montgomery county, State of Maryland, and familiarly known as part of "Friendship farm," containing one hundred acres, more or less, and which said farm is now occupied by Mr. F. Beans, as tenant.

Also all that certain piece or parcel of ground and real estate situate, lying, and being in Montgomery county, State of Maryland, containing thirty acres of woodland, and purchased by
47 me from Horatio Trunnell, and being part of McKubbins' farm, commonly known as the "thirty-acre lot," bordering on the new county road, and running to the Metropolitan railroad; and reference is here made to the deeds conveying said pieces of ground and real estate to the party of the first part, duly recorded among the land records of Montgomery county, State of Maryland, for a more full and accurate description thereof, together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, and claim and
48 demand whatsoever, either at law or in equity or otherwise however, of the said party of the first part of, in, to, or out of the said pieces or parcels of land and premises; to have and to hold the said pieces or parcels of land and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to her and their sole use, benefit, and behoof, forever.

In trust, nevertheless, for the uses and purposes following and none other; that is to say, in trust for the sole and separate use of Willie Ernest Nailor, infant son of the said parties of the first and second part, with full power and authority to said party of the second part to take, demand, and receive the rents, issues, and profits of said land
49 and premises, and to apply the same to the support, maintenance, and education of said Willie Ernest Nailor. And upon the further trust that when said Willie Ernest Nailor shall arrive at the age of twenty-one years, then, and in that event this trust shall cease and determine, and all the right, title, interest, and estate in fee-simple in and to said pieces or parcels of land shall vest absolutely in said Willie Ernest Nailor, his heirs and assigns, forever. And upon this further trust that should said Willie Ernest Nailor die before attaining the age of twenty-one years as aforesaid, or after attaining said age and becoming vested with the title to said pieces
50 and parcels of land and premises as aforesaid, should said Willie Ernest Nailor die without having disposed of said property, or any portion thereof, then, upon the happening of either of

said contingencies, the title in fee-simple to said pieces and parcels of ground and real estate shall vest absolutely in said party of the second part, her heirs and assigns, forever; and, in the event of either of said pieces or parcels of ground shall have been disposed of by said Willie Ernest Nailor, then whatever of said property which shall remain undisposed of at the time of the death of said Willie Ernest Nailor shall vest in said party of the second part in fee-simple as aforesaid. And said party of the first part, for himself, his heirs,
51 executors and administrators, doth hereby covenant, promise, and agree to and with the said party of the second part, her heirs and assigns, that he, the said party of the first part, and his heirs, shall and will warrant and defend forever the said pieces, parcels, and lots of ground and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through him, them, or any of them; and further, that he, the said party of the first part, and his heirs, shall and will at any and all times hereafter, upon
52 the request and at the cost of the said party of the second part, her heirs or assigns, make and execute all such other deed or deeds or other assurances in law for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances unto the said party of the second part, her heirs or assigns, as the said party of the second part, her heirs or assigns, *as the said party of the second part. her heirs or assigns*, or her or their counsel learned in the law, shall or may devise, advise, or require.

In witness whereof the said party of the first part hath hereunto set his hand and affixed his seal the day and year first hereinbefore written.

ALLISON NAILOR. [SEAL.]

53 Signed, sealed, and delivered in the presence of—
N. CALLAN.

DISTRICT OF COLUMBIA, }
County of Washington, } *sct:*

I, Nicholas Callan, a notary public in and for the District of Columbia, do hereby certify that Allison Nailor, senior, party to a certain deed bearing date on the 29th day of ——, A. D. 1878, and hereto annexed, personally appeared before me in said District the said Allison Nailor, senior, being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 29th day of March, A. D. 1878.

[Seal Nicholas Callan, notary public, Washington Co., D. C.]

N. CALLAN,
Notary Public.

54 STATE OF MARYLAND, } *sct:*
Montgomery County, }

I hereby certify that the aforegoing has been truly taken and copied from Liber E. B. P., No. 17, folios 404, &c., one of the land record books of the circuit court for Montgomery county.

In testimony whereof I hereto subscribe my name and affix the seal of the circuit court for said county this 15th day of April, A. D. 1879.

E. B. PRETTYMAN,
Clerk of the Circuit Court for Montg'y County.

55 "EXHIBIT D." (Filed Mar. 18, 1879.)

At the request of Catharine Conley the following deed was recorded the fifth day of April, 1878, to wit:

This indenture, made this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and seventy-eight, between Allison Nailor, senior, of Washington city, District of Columbia, of the first part, and Catharine Conley, of said city and District, of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of five ($5.00) dollars, in lawful money of the United States, to him in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted,
56 bargained, sold, aliened, enfeoffed, released, and conveyed, and doth by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, her heirs and assigns, forever, the following-described real estate, situate, lying, and bearing in Montgomery county, State of Maryland, containing one hundred acres of land, more or less, being the same farm and property conveyed by one Patrick O'Connor to said party of the first part by deed duly made, executed, and recorded among the land records of said Montgomery county, State of Maryland, reference to which said deed is hereby made for a more full, complete, and perfect description of said real estate and farm, together with all
57 the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said party of the first part of, in, to, or out of the said piece or parcel of land and premises; to have and to hold the said piece or parcel of land and premises, with the appurtenances, unto the said party of the second part, her heirs and assignees, to her and their sole use, benefit, and behoof forever. And the said party of the first part, for himself, his heirs, executors, and administrators, doth
58 hereby covenant, promise, and agree to and with the said party of the second part, her heirs and assigns, that he, the said party of the first part and his heirs shall and will warrant and forever defend the said piece or parcel of land and

premises and appurtenances unto the said party of the second part, her heirs and assigns, from and against the claims of all persons claiming or to claim the same, or any part thereof, by, from, under, or through him, them, or any of them. And, further, that he, the said party of the first part, and his heirs shall and will, at any and at all times hereafter, upon the request and at the cost of the said party of the second part, her heirs or assigns, make and exe-
59 cute all such other deed or deeds, or other assurance in law, for the more certain and effectual conveyance of the said piece or parcel of land and premises and appurtenances unto the said party of the second part, her heirs or assigns, as the said party of the second part, or her heirs or assigns, or her or their counsel learned in the law, shall advise, devise, or require.

In testimony whereof the said party of the first part hath hereunto set his hand and seal on the day and year first hereinbefore written.

ALLISON NAILOR. [SEAL.]

Signed, sealed, and delivered in presence of—
N. CALLAN.

DISTRICT OF COLUMBIA, }
County of Washington, } *sct.:*

I, Nicholas Callan, a notary public in and for the District
60 aforesaid, do hereby certify that Allison Nailor, senior, party to a certain deed bearing date on the twenty-ninth day of March, A. D. 1878, and hereto annexed, personally appeared before me, in the county aforesaid, the said Allison Nailor, senior, being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twenty-ninth day of March, A. D. 1878.

[Seal Nicholas Callan, Notary Public, Washington Co., D. C.]

N. CALLAN,
Notary Public.

STATE OF MARYLAND, }
Montgomery County, } *sct.:*

I hereby certify that the foregoing has been truly taken and copied from Liber E. B. P., No. 17, folios 406, &c., one of the
61 land record books of the circuit court for said county.

In testimony whereof I hereto subscribe my name and affix the seal of the circuit court for said county this 15th day of March, A. D. 1879.

E. B. PRETTYMAN,
Clerk of the Circuit Court for Montgomery County.

Restraining Order. (*Issued Feb.* 27, 1879.)

The defendant is hereby restrained, as prayed in the within-mentioned bill, until further order, to be made, if at all, after a hearing,

which is fixed for the 9th day of March, 1879, of which take notice.

By the court:

MACARTHUR, *Justice.*

(At chambers.)

62 *Subpœna to Answer.* (*Issued Feb.* 27, 1879.)

RACHEL D. NAYLOR *et al.*, Complainant,
vs.
CATHARINE CONLEY, Defendant. } No. 6658. Eq'y Dock. 19.

The President of the United States to Catherine Conley:

You are hereby commanded to appear in this court at its special term, occuring twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*
By C. ROBINSON, JR.,
Ass't Clerk.

(Endorsed:) Summoned and served notice of injunction Feb'y 28, 1879. F. Douglass, marshal.

63 *Amendment to Bill.* (*Filed Mar.* 18, 1879.)

In the Supreme Court of the District of Columbia.

RACHEL D. NAILOR, WASHINGTON T. NAILOR, Matthew Trimble, Rachel E. Trimble, James W. Clarke, and Frances M. Clarke
vs.
CATHARINE CONLEY. } Equity. No. —.

64 And now, this 17th day of March, 1879, come the complainants and amend their bill as follows, viz:

Insert the following immediately after and as a part of the paragraph of said bill, viz:

And the complainants further show that the said Catharine Conley has no other property or means of any sort except the real estate hereinbefore referred to, which she fraudulently procured to be conveyed to her as aforesaid, and she is otherwise wholly insolvent and unable to respond in damages which might be recovered at law; and if she be allowed to collect the said rents of said real estate, or to sell any part thereof and convert it into money, the complainants would be wholly without adequate remedy to indemnify themselves
65 against such loss, and would suffer irreparable damages in the premises.

RACHEL D. NAILOR.
WASHINGTON T. NAILOR.
M. TRIMBLE.
RACHEL E. TRIMBLE.
JAMES W. CLARKE.
FRANCES M. CLARKE.

DISTRICT OF COLUMBIA, *Washington County,* } *to wit:*

I, Thomas J. Myers, a notary public within and for the district and county aforesaid, do hereby certify that Rachel D. Nailor, Washington T. Nailor, M. Trimble, and Rachel E. Trimble, whose names are signed to the foregoing bill, appeared and made oath severally, in due form of law, that they and each of them had heard the foregoing bill read and know the contents thereof, and that the
66 facts therein stated upon information and belief they believe to be true.

Given under my hand and official seal this 18th day of March, 1879.

[NOTARIAL SEAL.] THOS. J. MYERS,
Notary Public.

Answer of Defendant. (*Filed Mar.* 22, 1879.)

Supreme Court of the District of Columbia.

RACHEL D. NAILOR *et al.* *vs.* CATHARINE CONLEY. } Equity Docket 19. No. 6658.

The answer of the defendant, Catharine Conley, to the bill of complaint of the above-named complainants.

In answer to said bill defendant says as follows:

1. The allegations of the first paragraph are admitted.

2. The allegation- of the second paragraph are true.

67 3. Defendant has no personal knowledge of the allegations of the third paragraph, her information in reference thereto being derived from common reputation. She, however, believes them to true.

4. It is true that Allison Nailor, Sr., deceased, was during his lifetime possessed of much and valuable real estate, and it is also true that at the time of his death, aside from the property described in subsequent paragraphs of the bill, he left real estate well worth the sum of $75,000, the title to which is now vested in his heirs-at-law.

5. Of the marriage of the complainant Rachel and said Allison about the time alleged defendant has no personal knowledge, and, if material, requires strict proof thereof. Defendant does not
68 know, nor does she admit, that the accumulation of property by said Allison was in any degree the result of the aid and co-operation of said Rachel.

6. Defendant does not know at what time said Allison became addicted to the use of liquors, but on information and belief she avers that ever since arriving at the age of maturity he has been what is generally known as a drinking man, but never did his indulgences extend to such a degree as to cloud or impair his judgment or render him unfit for the transaction of business; on the contrary, the very large amount of property which he owned was acquired during periods when he drank habitually, and his habits in that

respect were the same during the latter years of his life as
69 the time when said property was being accumulated. Some time in the year 1870 said Allison, without any solicitation on the part of this defendant, applied to her for board, stating at the time that he had been driven from his home, and desired quarters in the vicinity of the places of business of his sons. So far from inviting or enticing him away from his home this defendant did not even know that he entertained a purpose of leaving the same until he applied to her as aforesaid. It is untrue that defendant's house was a disreputable one, or that she plied said Allison with liquors and induced him to drink to intoxication and to indulge in criminal intercourse with her.

70 On the contrary, defendant charges the fact to be that some time in the year 1870 the complainant Rachel ordered and commanded said Allison to leave the house in which they were then residing, as she had frequently directed him to do before, and that her treatment of said Allison at that time, and for a long time previous thereto, was harsh and unkind, to such a degree that they were compelled to occupy separate apartments, and said Allison being convinced that he could not remain with the complainant peaceably or with safety removed from said house of his own volition, without any inducement from defendant or any one else, so far as she is in-
71 formed, the complainant being left in the full occupation and enjoyment of the house which she then occupied and the property of said Allison. Subsequent to his removal as aforesaid said Allison continued to reside with defendant and had by her four children, defendant yielding to his solicitations and in such intercourse departed for the first time from the paths of virtue.

7, 8, 9. The conveyances referred to in these paragraphs were executed by said Allison, delivered to the defendant, and duly recorded. So far from being procured by the fraudulent practices and undue influence of this defendant they were executed by said Allison of his own volition, upon his own suggestion, and by way of pro-
72 vision for the children therein mentioned and this defendant, a provision proper, reasonably approved by the law, and which it was his duty to make. Further answering these paragraphs, defendant says that on the 4th day of September, 1878, a suit was instituted in this court by Allison Nailor, Jr., one of the heirs-at-law of said Allison, deceased, but not a party to this suit, against said Allison, Sr., this defendant, and Washington T. Nailor, one of the complainants herein, setting up a certain power of attorney alleged to have been executed by Allison, Sr., to said Allison, Jr., and praying specific performance of an alleged agreement evidenced thereby and an injunction against the collection of rents by said Allison, Sr.,
73 or this defendant. The conveyances referred to in these paragraphs were set up and their validity attacked. An answer was filed to said bill by Allison, Sr., and, answering so much thereof as related to these conveyances, he said "he did make the conveyances referred to in these paragraphs, which conveyances were in all respects fair, legitimate, and eminently proper."

All of which will more fully and at large appear by reference to

said answer filed in said cause in this court, equity No. 6387, dock. 17, and which is prayed to be read and considered as a part of this answer.

10. It is untrue that there was no valuable consideration for the execution of said deeds. On the contrary, they impart a consideration, which said Allison, if alive, would be estopped to deny,
74 and the complainants standing in his shoes are also estopped to dispute. The consideration therefor was not only valuable and legal, but supported by the highest considerations of morality and public policy.

11. Defendant denies each and every allegation of fraud in the making and execution of said deeds as of the exercise of undue influence. At the time of their preparation and execution said Allison was in the possession of all his faculties, entirely competent to enter into the most important and binding contracts. They were made at the suggestion of said Allison himself, and were not proposed, demanded, or procured by any representations, plea, fraud, undue influence, or duress on the part of this defendant, nor
75 in consideration of future illicit intercourse. He was entirely sane at the time of their execution and until the day of his death; nor was he under the influence of liquor, or in any other way incapacitated from understanding the nature and effect of said conveyances. Indeed the provisions of said deeds were suggested by him, and he requested a friend in whom he had confidence to draw them. When drawn and submitted to him for approval he made a critical examination of their form and of the provisions therein contained, and expressed some doubt as to their technical precision, and finally concluded to submit them to some competent attorney for examination, with instructions if they were deemed insufficient to prepare legal and proper instruments for the purpose of carrying his
76 intentions into effect. This was done, and upon receiving the deeds set up in the bill he executed them and they were duly recorded, his course throughout the entire transaction evidencing the fact that the powers of his mind were unimpaired, and that he well understood the manner of limiting and settling the title to real estate. He was, up to within a few hours of his death, perfectly capable of collecting his rents and managing and controlling his property to the best advantage, but his sons were constantly soliciting their appointment as his agent, averring that they had peculiar facilities for the collection of rents and would relieve him of the trouble thereof, promising to render full, prompt, and
77 accurate accounts of their transactions. Relying upon their affection and integrity, he appointed first one of his sons, until finding that he was being defrauded, nothing of any consequence being paid over to him on account of his rents, changed to the other, and being treated in the same manner revoked the agencies on the part of both. Never did this defendant counsel any disagreement between said Allison and his sons; on the contrary, she advised harmony, and his action in reference to his family was the result of his own unbiased inclination and judgment. While residing with

the defendant said Allison, Sr., was treated and nursed with the
78 utmost kindness and tenderness. During his last illness no effort was spared to promote his comfort and prolong his life, and the care and attention which was denied him at his own home and by his own family he received at the hands of this defendant. During the last years of his life and before, at the time, and subsequent to the date of the conveyances set up in the bill, the complainant, Washington T. and said Allison, Jr., had large business transactions with their father, taking from him conveyances and leases of numerous and valuable pieces of property, for which they never paid more than a merely nominal consideration, and were fully satisfied of his entire sanity and perfect ability to under-
79 stand and appreciate the nature and consequences of the most important contract. Indeed, defendant is informed and avers the fact to be that every one of the children of said Allison, Sr., received from their father conveyances, by way of gift, of valuable pieces of property. Nor did the undue influence on the part of the defendant, which is now charged against her, serve to prevent his sons from obtaining the conveyances which they desired to procure. And defendant refers to the papers in said equity cause No. 6387 and prays that she may read such portions of them as she may be advised as a part of this her answer.

Never did the defendant procure or induce indulgence in liquor by said Allison, Sr., or did she encourage intercourse with
80 her—*courage intercourse with her*—self, nor was her influence over said Allison unbounded or exercised for any improper, selfish, or fraudulent purpose. All the averments of the bill of this nature are utterly without foundation in fact.

And the defendant avers that the validity of the conveyances referred to could not be questioned by said Allison, Sr., if alive, and that the complainants do not stand in any other or better position than would said Allison, Sr., during whose lifetime no suggestion was ever made as to his want of capacity or mental power.

12. It is true that a proceeding for divorce was instituted by the complainant Rachel, as stated in this paragraph. Defendant
81 does not know the motives which induced its institution or the purposes of said Rachel in its conduct. She says it is utterly untrue that she counseled or advised the said Allison to treat the orders of the court passed therein with contempt. She rarely spoke with him on the subject, and in his defence he was advised by able counsel, whose direction she counseled him in all respects to follow. Defendant was not a party to said suit, and she submits that she is not bound by any evidence, orders, or decrees therein.

13. It is true that said children are dead, and that, by virtue of said conveyances, the title to the property therein described is vested in her. It is true that she is in possession of parts of lots 2
82 and 20, square 293; and she says that before taking possession thereof the said property was unproductive, out of repair, and untenantable, and that during the fall of 1878 she expended the sum of about $1,000 in the improvement, rebuilding, and renovation thereof by putting in a new story and entirely refitting the same.

At the time of the conveyance to her of the 14th-street property it was worth only about $400; since then she has improved it to the extent of $3,000. The residue of said real estate, except the parcel leased to one O'Meara, it is true, was leased by one of the sons of said Allison, Sr., pretending to act as his egent, but she avers
83 that said leases cannot operate against her right thereto. It is utterly untrue that the value of the property embraced in said conveyances is as stated in the bill; on the contrary, she says, that its value is very much less.

14. Defendant submits that inasmuch as said Rachel did not join in any of said conveyances her right of dower in the property therby conveyed, if she is the widow of said Allison, Sr., is not impaired, and that she has nothing to complain of in reference thereto. Defendant denies that the heirs-at-law of said Allison, Sr., are entitled to the fee-simple of said property, but submits that her title thereto is good, subject, perhaps, to the dower of said Rachel.

84 Further answering, defendant says that no decree of binding force can be pessed herein, inasmuch as said Allison, Jr., one of the heirs-at-law of said Allison, Sr., is not a party to this cause, and that all the parties in interest not being before the court, no final decree can be passed herein. Indeed, she avers that Frances M. Clark and James W. Clarke, whose names appear in the caption of the bill, never signed or verified the same, and there is nothing to show that they authorized the use of their names.

Defendant prays that she may have the same benefit and advantage as though she had specially demurred to the bill of complaint.

85 And having fully answered, as she is advised, she prays to be hence dismissed, with her reasonable costs in this behalf most unjustly restrained.

her
CATHARINE x CONLEY.
mark.

CARRINGTON & CARRINGTON,
Att'ys for Def't,
& ALLAN RUTHERFORD.

I do solemnly swear that I have heard read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those therein stated upon information and belief I believe to be true.

her
CATHARINE x CONLEY.
mark.

Subscribed and sworn to before me this — day of March, A. D. 1879.

[NOTARIAL SEAL.] IRVING WILLIAMSON,
Notary Public.

86 *Order Modifying Restraining Order, &c.* (*Filed Mar.* 22, 1879.)

Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } No. 6658.

This cause coming on to be heard upon complainants' motion for injunction, it is, this 22nd day of March, 1879, ordered by the court that the defendant, Catharine Conley, be, and she is, hereby enjoined, prohibited, and restrained from selling or incumbering any portion of the real estate described in the bill during the pendency of this suit; and it is further ordered that so much of the order passed herein on February 27, 1879, as restrained the collection of the rents of said real estate by the defendant be, and the same is hereby, discharged.

By the court:

MACARTHUR, *Justice.*

87 *General Replication and Joinder of Issue.* (*Filed Apr.* 19, 1879.)

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } No. 6658.

The complainant replies generally to the answer of the defendant, and joins issue thereon.

W. A. COOK,
C. C. COLE,
Sol'rs for Compl'ts.

Docket Entries.

May 27, 1879, appearance of Charles Thompson for defendant. O. B. 7, p. 108.

May 11, 1880, interrogatories and cross-interrogatories filed.

May 11, 1880, stipulation to issue commission, and commission issued.

88 May 31, 1880, depositions by mail from F. C. Dell, U. S. com'r, San Antonio, Texas.

June 8, 1880, deposition published.

Nov. 24, 1880, cause calendared for Dec'r special term by defendant.

Jan'y 13, 1881, compl'ts' testimony, 2 vols., and Exhibits 1, 2, and P. M. McM., No. 1.

Jan'y 14, 1881, 6 depositions in rebuttal, for compl'ts, taken before Marian Dorian.

Jan'y 14, 1881, petition for leave to amend bill filed.

Jan'y 14, 1881, petition for leave to amend bill granted.

Order Allowing Bill to be Amended.

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } No. 6658.

89 On motion and petition of the complainants they have leave to make Allison Nailor, junior, a party defendant to this bill, and to amend the prayer of their bill so as to pray for the setting aside and annulling of all the deeds mentioned in the bill January 14th, 1881.

By the court:

W. S. COX, *Justice.*

Second Amendment to Bill. Filed Jan. 14, 1881.

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } No. 6658.

And now comes the complainants, and, by leave of the court first had and obtained for the purpose, makes the following amendments to the prayer of their original bill in this cause:

First amendment.

90 1. Add to the first paragraph of said prayer the following words: "And that the said Allison Nailor, Jr., may be made a party to this suit."

Second amendment.

2. In lieu of the second paragraph of said prayer substitute the following: "That the court will by proper decree declare the alleged deeds or conveyances in said bill set forth for the real estate therein mentioned, purporting to have been made by the said Allison Nailor, senior, in his lifetime, to the said Catharine Conley, null and void, and direct the same to be delivered up and cancelled.

RACHEL D. NAILOR & OTHERS,
By COOK & COLE, *Their Solicitors.*

91 *Answer of Allison Nailor, Junior.* (*Filed Jan.* 14, 1881.)

In the Supreme Court of the District of Columbia.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } No. 6658.

The answer of Allison Nailor, junior, to the bill in this cause.

This defendant, for answer to so much of said bill as he is advised it is material for him to answer, says:

That he claims no right or interest in the property in controversy

in this suit; that he has, during the life of his father, Allison Nailor, senior, received advancement from him, which advancement so made by his father he has since his death elected to retain, and that he has therefore and does hereby again, disclaim any and all
92 right, claim, or interest as an heir-at-law of the said Allison Nailor, senior, deceased.

And this respondent, having fully answered, prays that he may be hence discharged, with his reasonable costs herein incurred.

A. NAILOR, JR.

HENRY WISE GARNETT,
Sol'r for Def't.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

A. NAILOR, JR.

Subscribed and sworn to before me this 13th day of January, A D. 1881.

R. J. MEIGS, *Clerk, &c.*
By R. J. MEIGS,
No. 3, Ass't Clerk.

93 *Stipulation as to Evidence.* (*Filed Jan.* 17, 1881.)

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } No. 6658.

It is hereby stipulated by and between the solicitors of the respective parties to this suit that each shall have the right to object to any testimony taken by the opposite party at the hearing, on the ground of the incompetency of the witnesses, or the incompetency or inadmissibility of the testimony, to the same extent as if such objections had been spread upon the record at the time of the taking of such testimony.

It is further stipulated that it shall be considered as proven
94 in said cause that the children mentioned in the bill in said cause were born and died at the following dates respectively, viz: Willie Ernest, born on the 1st day of November, 1872, and died on the 6th day of August, 1878; Annie, born July 23d, 1871, died April 1st, 1872; Walter, born June 4th, 1875, died January 17th, 1877; Edna, born October 28th, 1876, died August 8th, 1878.

It is also stipulated that it shall be considered as proven in the case that the deeds for the property in controversy, dated the 29th day of March, 1878, or the written portion of the body of them, are in the handwriting of Irving Williamson and E. C. Carrington, and

that Williamson was, at the date thereof, and still is, associ-
95 ated in the practice of law with E. C. Carrington, one of the solicitors for the defendant, Conley, in this cause and for Allison Nailor in equity cause No. 6387, and that said deeds were prepared in the office of said Carrington.

C. C. COLE, *Of Counsel for Complainants.*

GRISWOLD & THOMPSON,
CARRINGTON & CARRINGTON,
Sol'c'rs for Def't.
ALLAN RUTHERFORD.

Decree of Special Term. (*File- Jan.* 26, 1881.)

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR, *et al.*
vs.
CATHARINE CONLEY and ALLISON NAILOR, JR. } No. 6658.

96 This cause came on to be heard at this term upon the pleadings and proofs, and was argued by counsel. Upon consideration whereof it is, this 26th day of January, 1881, by the court ordered, adjudged, and decreed that the deed made by Allison Nailor, senior, to the defendant, Catharine Conley, in trust for the child mentioned therein as Willie Ernest Nailor, bearing date on the 27th day of November, 1872, and the three deeds made by the said Allison Nailor, senior, to the said Catharine Conley on the 29th day of March, 1878, one for her own benefit, one in trust for the child mentioned therein as Willie Ernest Nailor, and the other for the benefit of the child mentioned therein as Mary Edna Nailor, be, and
97 each and all of said deeds are hereby, declared illegal, null, and void, and set aside and held for naught.

It is further ordered, adjudged, and decreed that the said Catharine Conley do, within thirty days from this date, make, execute, acknowledge, and deliver to the complainants, Washington T. Nailor, Lizzie Trimble, and Frances M. Clarke, two quit-claim deeds, one embracing the real estate mentioned in the bill, situated in Washington, District of Columbia, and the other embracing the real estate therein mentioned, situated in the county of Montgomery and State of Maryland, conveying to said complainants all the right, title, and interest which she had or has in said real estate by
98 virtue of said deeds. And in case the said Catharine Conley shall fail to make and deliver such deeds within the thirty days aforesaid, then Chas. C. Cole, who is hereby appointed trustee for the purpose, is hereby authorized and directed to make such conveyances on behalf of the said Catharine Conley.

And it is further ordered, adjudged, and decreed that the said complainants do recover against the said defendant, Catharine Conley, their costs by them about the prosecution of their suit in this behalf expended.

From this decree the defendant appeals, and such appeal is allowed.

W. S. COX, *J.*

99 *Order Fixing Penalty of Appeal Bond to General Term.* (*Filed Jan.* 28, 1881.)

In the Supreme Court of the District of Columbia.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } Eq. No. 6658.

The penalty of the bond for an appeal to the general term in this case is fixed at sixteen hundred dollars, and twenty days from this date is allowed the said defendant to give the same.

By the court: W. S. COX, *J.*
Jan. 28th 1881.

Stipulation as to Collection of Rents. (*Filed Jan.* 29, 1881.)

In the Supreme Court of the District of Columbia.

100 NAILOR *et al.*
vs.
CONLEY. } Eq., 6658.

It is hereby stipulated between counsel for complainants and defendants that the complainants be, and are hereby, authorized to collect, receive, and hold the rents accrued, or which may accrue, from the property situated in Montgomery county, Maryland, mentioned in the above-entitled cause, during the pendency of the appeal to the court in general term; and the amounts so collected they shall hold in the capacity of receivers, and may take possession of the said property, as such receivers, Jan. 28th, 1881.

C. C. COLE,
For *Counsel for Complainants.*
CARRINGTON & CARRINGTON,
Solicitors for Def't.
GRISWOLD & THOMPSON.

101 *Docket Entries.*

Feb. 10, 1881, appeal bond by defendant, Conley, to general term, filed.

Apr. 6, 1881, printed record to the general term filed by defendant.

Decree of General Term. (*Filed Feb.* 23, 1882.)

In the Supreme Court of the District of Columbia. In General Term. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY *et al.* } No. 6658.

This cause came on to be heard at the present term upon the record from the special term, and was agreed by counsel; whereupon, upon consideration thereof, the court here is of opinion that there is no error in the decree of the said special term appealed
102 from, of the 26th day of January, 1881, but that so much of said decree as directs the defendant to reconvey said property mentioned therein, and appointing a trustee to make such conveyance in case of her failure to do so, is unnecessary.

It is, therefore, this 23d day of February, 1882, ordered, adjudged, and decreed that said decree be, and the same is hereby, modified by striking therefrom said requirements.

And it is further ordered, adjudged, and decreed that the said decree so modified be, and the same is hereby, affirmed, with costs.

And thereupon the counsel for the defendant, Catharine Conley, prays on appeal to the Supreme Court of the United States, which is allowed.

By order of the court.

D. K. CARTTER,
Ch'f Just.

103 *Affidavit of Service of Copies of Decrees to Tenants in Possession of a Portion of the Property.* (*Filed Mar.* 14, 1882.)

DISTRICT OF COLUMBIA, } *To wit:*
Washington County, }

James W. Clarke, being duly sworn, says, upon oath, that he did on the 10th day of March, 1882, deliver a copy of the above decrees (certified copies of the decree of the special term, dated the 26th of January, 1881, and of the general term, dated the 23d of February, 1882, are attached to this affidavit) to each of the tenants in possession of the premises known as lots 11 and part of 12, in square 258, being four houses on D street N. W., between 13th and 13½*th* streets, in the city of Washington, a portion of the property men-
104 tioned in said decrees, and demanded possession of said premises on behalf of the complainants in the aboved-styled suit, but said tenants and each of them refused to deliver such possession. Said tenants are in possession of said property, claiming to hold the same under Kate Conley, the defendant in the above suit.

JAMES W. CLARKE.

Subscribed and sworn to before me this 10th day of March, 1882.

[NOTARIAL SEAL.] L. C. YOUNG,
Notary Public.

Petition of Complainants for Writ of Assistance. (*Filed Mar.* 14, 1882.)

In the Supreme Court of the District of Columbia. Equity.

105 RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY *et al.* } No. 6658.

To the honorable the judges of the said court, holding a special term:

Your petitioners, Rachel D. Nailor, Washington T. Nailor, Matthew Trimble and Rachel E. Trimble, his wife, James W. Clarke and Frances M. Clarke, his wife, the complainants in the above-styled suit, respectfully show to the court that soon after the decision of this case in their favor by the special term of said court, on the 26th day of January, 1881, the defendant, Catharine Conley, surrendered to them possession of the real estate, situated in Montgomery county, Maryland, in controversy in this suit, by written
106 stipulation between their solicitors and the solicitors for the said defendant, now on file in the papers in this cause, and which is referred to as part of this petition. And in pursuance of said stipulation they took immediate possession of the said real estate situated in Maryland, and have ever since been and still are in possession thereof. The supersedeas bond which the defendant gave upon her appeal to the court in general term was intended to cover only the damages arising from her retaining possession of so much of the property mentioned in said bill as is situated in the city of Washington.

They further represent that on the 10th day of March,
107 1882, more than ten days after the affirmance of the decree of the said special term in this cause by the court in general term, they caused a certified copy of the decree in special term, as well as of the decree of the general term affirming the same, to be served on the tenants of the defendant, Catharine Conley, in possession of the said real estate mentioned and described in the bill in this cause, situated in the city of Washington, and demanded possession of said real estate from said tenants respectively. The tenants in possession of part of lot No. 26, in square No. 231, and part of lots No-. 2 & 20, in square No. 293, yielded to said demand and delivered possession of the same to complainants, but those in possession of lot 11 and part
108 of lot No. 12, in square No. 258, mentioned in the bill, each and all refused to accede to said demand or deliver possession of said property. There are four houses on these lots, and each is in possession of a tenant, who claim- the same under the defendant, Kate Conley, and who have been paying her rent for the same. A copy of said decrees, with an affidavit of the service of a copy thereof on said tenants, is filed herewith and made part of this petition.

In view of the premises, your petitioners pray that the court will direct the issuance of a writ of assistance to place them in posses-

sion of said property, viz., lot No. 11 and part of lot 12, in
109 square 258, in the city of Washington and District of Columbia.

RACHEL D. NAILOR & OTHERS,
By COOK & COLE, *Solicitors.*

DISTRICT OF COLUMBIA, } *To wit:*
Washington County, }

James W. Clarke, being duly sworn, says upon oath that he has read the foregoing petition and knows the contents thereof, and that the matters therein set forth, so far as stated upon his own knowledge, are true, and those therein stated upon information derived from others he believes to be true.

JAMES W. CLARKE.

Subscribed and sworn to before me this 13th day of March, 1882.
R. J. MEIGS, *Clerk,*
By M. A. CLANCY, *Ass't Clerk.*

110 *Motion of Complainants for Writ of Assistance.* (*Filed Mar.* 14, 1882.)

In the Supreme Court of the District of Columbia. Equity.

R. D. NAILOR *et al.* }
vs. } No. 6658.
CATHARINE CONLEY. }

And now come the complainants' solicitors and move the court to award a writ of assistance to enable them to obtain possession of lot No. 11 and part of lot No. 12, in square No. 258, mentioned in the bill in this cause, on the petition and affidavit this day filed therein.

COOK & COLE,
Sol's for Compl'ts.

111 *Order of General Term Fixing Penalty of Bond to Operate as Supersedeas.* (*Filed Mar.* 29, 1882.)

NAILOR }
v. } Equity. No. 6658.
CONLEY. }

And thereupon the defendant applied this 29th of March, 1882, to the court in general term to fix the penalty of a bond to operate as a supersedeas of the decree in general term in the above-entitled cause; and the court thereupon ordered that the penalty of such bond be in the sum of ten thousand dollars.

By order of the court.

D. K. CARTTER,
Ch'f Just.

112 *Answer of Defendant, Catharine Conley, to Complainants' Petition for Writ of Assistance.* (*Filed Apr.* 3, 1882.)

Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } No. 6658.

To the supreme court of the District of Columbia, holding an equity court for said District:

The answer of Catharine Conley, the defendant in this cause, to the petition of complainants filed herein on the 14th day of March, 1882, respectfully shows—

That it is true that a stipulation was entered into by counsel in this case whereby the property in Maryland referred to in
113 these proceedings was placed in the possession of complainants as receivers, with authority to collect the rents thereof and hold the same in the capacity of receivers pending the appeal in this cause. Said stipulation is on file, and speaks for itself, but defendant submits that the matters and things therein contained are not material to the decision of the questions raised in said petition, or to the relief prayed for therein. She does not know what action has been taken by the complainants in reference to said Maryland property, and if the allegations of the petition be material she requires strict proof.

Further answering, defendant says that no demand has ever been made upon her by the complainants, or by any one acting in
114 their behalf, for the possession of the property in controversy, or any part thereof. She does not know what action has been taken by complainants in reference to the tenants occupying said premises, and requires strict proof of the allegations of the petition in respect thereto. She charges, as she is advised, that no such demand for possession of said property has been made by the complainants, as will authorize them to apply for, or the court to grant, a writ of assistance even in a case where the court had power to order such a writ.

Further answering, this defendant says that the purpose and scope of the bill of complaint in this cause was the cancella-
115 tion of certain deeds specifically referred to therein. The question of title to or possession of the property was not in any manner in issue in said cause, nor was any proof taken in respect thereto, and in resisting the cancellation of said deeds, defendant was not obliged to disclose her title to said property, the sole issue being in respect to the deeds referred to, as to which alone was any relief sought by the complainants. And she avers that the decree of the general term by virtue of which the issuance of said writ is asked for simply cancels said deeds, and does not in any manner decide as to the title of the defendant to said property, nor does it find or establish any right of the complainants to the possession thereof.

116 And defendant submits, as she is advised, that if a writ of assistance is ordered to put the heirs-at-law of Allison Nailor, Sr., deceased, referred to in these proceedings, in possession of said property, such writ or process ought to be restricted and confined to said property in respect of the claim of the complainants, inasmuch as only three out of the four heirs-at-law of said Allison are entitled to the benefit of said decree, or to the benefit of any other order or decree passed in this cause.

And having fully answered, defendant prays that said petition be dismissed, &c.

W. D. DAVIDGE,
Of Counsel.

117 I do solemnly swear that I am attorney for the defendant in this cause; that I have read the foregoing answer, and that the facts therein stated upon my personal knowledge are true, and those therein stated upon information and belief I believe to be true.

IRVING WILLIAMSON.

Subscribed and sworn to before me this 3rd day of April, A. D. 1882.

R. J. MEIGS, *Clerk.*
By M. A. CLANCY, *Ass't Clerk.*

Order Directing Issue of Writ of Assistance. (*Filed Apr.* 4, 1882.)

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
v.
CATHARINE CONLEY *et al.*
No. 6658.

118 On petition and answer thereto and motion of the complainants, it is, this, 4th day of April, 1882, ordered, that the clerk of this court do issue a writ of assistance in this cause, directing the marshal of this court to place the heirs of the said Allison Nailor, deceased, in possession of lot numbered eleven and part of lot numbered twelve, in square numbered two hundred and fifty-eight, in the city of Washington, in said District of Columbia.

A. B. HAGNER, *Asso. Just.*

Docket Entry.

119 Sept. 19, 1882, appeal to the general term from the order of the special term of April 4th, 1882, directing the issue of writ of assistance.

Testimony for Complainants.

Deposition of James W. Clarke, for complainants.

Commission to take Deposition. (*Issued May* 11, 1880.)

In the Supreme Court of the District of Columbia, the 11th day of May, 1880.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } Equity Docket 19. No. 6658.

120 The President of the United States to F. C. Dell, a United States commissioner, at Eagle Pass, Texas, Greeting:

Know you that in confidence of your prudence and fidelity you have been appointed and by these presents you are invested with power and authority to examine James W. Clarke as a witness for the complainant in the above-entitled cause, upon the interrogatories annexed to this commission; and therefore, you are hereby commanded, at a certain day and place, or certain days and places to be appointed by you, to cause said witness to come before you and then and there examine him, on oath or affirmation, upon the said interrogatories, and reduce his testimony into writing, to be signed by said witness, and having so done, annex the same to this writ,
121 closed up under your seal, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, Chief Justice.

R. J. MEIGS, *Clerk.*
By R. J. MEIGS, JR.,
Ass't C'l'k.

Stipulation as to Commission. (*Filed May* 11, 1880.)

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } No. 6658.

It is hereby stipulated by and between the parties to this suit, by their respective solicitors, that a commission may issue, without any order of court, from the clerk's office of said court to F. C. Dell, a United States commissioner, at Eagle Pass, Texas, to take the deposition of James W. Clarke, upon the interrogatories and cross-
122 interrogatories attached hereto; and when taken by him they shall be duly authenticated and returned by him under seal to the clerk of this court; but each party shall have the right to object to any question of the opposite party or the answer thereto at the hearing of the case; and after the return of said deposition a reasonable time shall be allowed to the defendant to take any testimony she may desire in rebuttal thereof.

Given under our hands this 11th day of May, 1880.

C. C. COLE,
Of Counsel for Complainants.
EDWARD C. CARRINGTON, Jr.,
Of Council for Def't.

123 *Interrogatories to be Propounded to James W. Clarke, One of the Complainants.* (*Filed May* 11, 1880.)

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHERINE CONLEY. } No. 6658.

Interrogatories to be propounded to James W. Clarke in the above-entitled cause.

1. Where do you reside?
2. Are you one of the complainants in this suit?
3. Did you ever reside in Washington? If so, how long? From what time to what time?
2. What relation, if any, are you or your wife to the late Allison Nailor, Sr., of Washington, D. C.?
5. Were you acquainted with the said Allison Nailor, Jr., in his lifetime, and, if so, how long?

124 6. Did you ever have the management or control of the business of the said Allison Nailor, Sr., and, if so, how long? From what time to what time?

7. If you ever had such management or control, state at whose request you had or did it, and state fully all the circumstances connected with your taking control thereof?

8. Why did not the said Allison Nailor, senior, manage and control his own business during the time you managed and controlled it, if you did so manage and control it? State fully all you know about it, and all the circumstances.

9. If you managed and controlled Mr. Nailor's business, state whether or not he was able and competent to attend to and transact his own business during that time? And, if you shall an-

125 swer that he was not competent or able to attend to it himself during that time, state fully what rendered him unable or incompetent to do so, if you know, and state fully all you know about his condition, physically and mentally, during the time you attended to his business, if at all?

10. Please state fully the condition of Mr. Nailor, mentally and physically, when you first knew him; what were his habits of life at that time, and especially as to the use of intoxicating drinks; whether there was any change in him during the time you knew him, in relation to his mental and physical condition, and, if there was, whether the change was sudden or gradual and slow, and what was the nature of the change, and what caused it, and when

126 it took place; whether there was any change in his habits while you knew him, and especially in relation to the use of intoxicating drinks.

11. What were your means of knowing the condition of his health and mind and his habits from 1869 to the time of his death; how often did you see him during that time, and how intimately were associated with him?

12. State whether he was addicted to the use of intoxicoting liquor

to excess at any time while you were acquainted with him; and, if so, to what extent, and at what period of his life he carried such excess to the greatest extent, and what effect, if any, it had upon his health or mind.

13. If you state that he did drink to excess and that it
127 did affect his health or mind, give all particulars and appearances which indicated that such was the effect.

14. How often did you talk with him during the last ten years of his life, and down to what period did you continue to be with him so as to converse with him or hear him converse with others?

15. Mention any peculiarities of conversation or habits that may occur to you indicative that his health or mind were impaired by excess of drink or otherwise; state fully.

16. State whether, in your opinion, Mr. Nailor was competent in the fall of the year 1872 to transact understandingly im-
128 portant business, such as conveying or making a disposition of his real estate.

17. State whether, in your opinion, he was competent to do so understandingly in the spring of 1878; say in the latter part of March of that year.

18. Do you know Catharine Conley, the defendant in this suit?

19. State anything you may know of Mr. Nailor's association with her both before and after he left his home to live with her.

20. State whether she ever came to you when you were transacting Mr. Nailor's business before he left home, or after, and why she came and what she said.

21. State whether she ever came to you for money while you were transacting his business, and whether she ever got it, and how.

22. Did you ever see Mr. Nailor and Catharine Conley in
129 the presence of each other; and, if so, about how often?

23. State whether she seemed to have any influence over him, and, if so, whether considerable or otherwise, and state all the facts and circumstances upon which you base your answer as to whether she had and exerted such influence over him.

24. State whether Mr. Nailor ever gave you any mules, and what conversation you and Catharine Conley had about them afterwards, and what was afterwards done with the mules; and state, also, when it was.

25. State anything and everything that occurred between you and Mr. Nailor and Catharine Conley about the renting of one of Mr. Nailor's houses on E street, between 13th and 14th; state fully
130 all that took place, and when it was.

26. While you were managing the property did you ever receive any orders from Mr. Nailor to pay money to Conley; if so, where are the orders? Please produce and file them with your deposition. In whose handwriting was the body of the orders and in whose the signature of Mr. Nailor? And state whether you recognized them as his, and if not, why not?

27. State whether you ever went to the house where Mr. Nailor was living with Conley to see him on business and how Conley treated you on such occasion, and what she said and did about let-

ting you see Mr. Nailor; also the nature of the business you
131 went to see him on, and the condition in which you generally found him.

28. If she ever refused to allow you to see him, state what excuse or reason she gave for such refusal, and whether it was true or untrue and how you know.

29. State whether he was a party to any suits in court while you were attending to his business, and what, if any, difficulty you had in inducing him to attend court, and whether he did attend court in such cases. And state whether he attended court in any cases in which Kate Conley was a party, what said cases were for, and the result of them, and who paid the fines, if any.

COOK & COLE,
Att'ys for Pl'ffs.

132 *Cross-interrogatories to be Propou-ded to James W. Clarke, one of the Complainants.* (*Filed May* 11, 1880.)

In the Supreme Court of the District of Columbia. In Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHERINE CONLEY. } No. 6658.

Cross-interrogatories to be propounded to James W. Clarke, a witness on the part of the complainants in the above-entitled cause.

1. How long have you resided where you now live? Did you formerly live in Washington, D. C., or elsewhere in the District of Columbia; if so, when did you leave there to reside elsewhere?

2. Did you ever live in the house of Mr. Allison Nailor, Sr.,
133 in Washington, D. C.; if so, mention year, and whether at that or any other time you *was* employed in or about the custom-house in Georgetown, D. C., for how long and in what capacity; and if so employed, *was* you then or at any time arrested for any charge connected with the discharge of your duties, or for any charge, and, if so, were you released on bail, and was George Hall one of your sureties on your bail bond, and did not Mr. Nailor procure him to become so; if so, did you leave the District of Columbia before the charge against you was tried, and remain away until your bail was forfeited; did Mr. Allison Nailor, Sr., pay, or any person for him, your forfeited
134 bail, or who paid it, and was not Allison Nailor, Sr., then very angry with you, and had you not then and now strong prejudices against him?

3. If you say in answer to direct interrogatories 6 and 7 that you at any time managed the business of said Allison Nailor, Sr., state whether you did not, while his agent, at different times, collect money for him, which you kept and never accounted for, and, particularly, whether during the time Mr. Bowen was mayor of Washington you did not collect money by his direction, which was due him, and which he directed you to pay taxes with, which money you kept, and failed to pay the taxes, and was you not discharged as his agent for this and like causes?

4. Did not others besides yourself manage the business
135 of Allison Nailor, Sr., at different times, and who and for how long, and do you not know that Mr. Matthew Trimble was for a time his agent?

5. If you say that you was at any time the agent of Allison Nailor, Sr., state whether, when so employed, you was out of other employment, and, being his son-in-law, he employed you for these reasons.

6. If you say that Allison Nailor, Sr., was incompetent for any reason to manage his business, state whether this incompetence was permanent, or at intervals, and whether or not you accounted to him in regard to all matters of business entrusted to you by him, and for all monies collected by you for him. Did you pay
136 all taxes on his property, and pay over all monies which came to your hands for him, and have you the vouchers for any accounting with him or payment made to him; if so, file the same with this commission.

7. State particulars in full upon which you base any opinion given of the mental and physical condition of Allison Nailor, Sr., and as to his habits of life and use of intoxicating drinks, specifying time, place, and circumstances of every particular named or alluded to, as also how long you knew him, when you left his house as an inmate, how often you saw him afterwards, as near as you can state; how long your interviews were, and when you left Washing-
137 ton to reside elsewhere, and how long you have been absent.

8. How many times did you see Allison Nailor, Sr., from 18— to the time of his death, and how long did you see him at each time?

9. In answer to direct interrogatory 12 state all particulars of time, place, and circumstance.

10. Did you or not see Allison Nailor, Sr., at all within the last ten years of his life; and, if so, when and where and for how long, in each instance? Is it not a fact that you did not see him at all in the last eight years of his life?

11. If you say that he had any peculiarities of habit or conversation, state whether one of his peculiarities was not a fondness for jokes and fun.

138 12. If you answer direct-interrogatory 16 give reasons in full for any opinion expressed and particulars of time, place, and circumstances upon which the opinion is based, and state whether in 1872 he did not have a lawsuit with one Randall and attend in court and elsewhere and otherwise to the business connected with that suit.

13. If you answer direct interrogatory 17, state whether you was in Washington, D. C., at any time in the year 1878.

14. In your answer to direct interrogatory 20 state time, place, and circumstances, and whether at the times named you *was* in the employment of Allison Nailor, Sr., or acting by his authority, or had not been discharged from his service.

139 15. In your answer to direct interrogatory 21 state if Mrs. Conley ever asked you for money, and when, where, and for

what reason, and what money; who was present at the time, and upon what claim or reason she asked for it.

16. If you answer direct interrogatory 22, state when, where, and under what circumstances, and who else was present, and all that was said and done, and if you ever saw Mrs. Conley alone or with Allison Nailor, Sr., over three times in your life, when and where and who else was present, and for what purpose did you see him or her, and what was said or done.

17. If you state, in answer to direct interrogatory No. 23,
140 that Mrs. Conley did exercise influence over Allison Nailor, Sr., state the words, actions, and manner of each, the subject of conversation and visit, the reason of your presence, when and where it occurred, and who else was present; and state further, whether, within your knowledge, any man or woman ever exercised any control or influence over Allison Nailor, Sr., in any business transaction, and the particulars of time, place, conversation, and business, and whether he was not a man peculiarly obstinate, independent, and self-judging in all business transactions, and state any business transaction coming under your personal knowledge
141 wherein he was not so, and all the circumstances connected with such transaction.

18. If you answer to direct interrogatory 24 that Allison Nailor, Sr., gave you any mules, state when and where and under what circumstances, and whether conveyed by bill of sale or in what manner, and whether you did not know that the mules alluded to *was* the property of Mrs. Conley, by her hired to work for the District of Columbia, and that you had them entered for work as your own, collected the hire, and kept it, never accounting for it to Mrs. Conley or Mr. Nailor, Sr.; and whether Mr. Nailor, Sr., did not threaten to have you arrested for using the mules and converting the
142 money to your own use; and did not Mr. Nailor, at the intercession of your wife, refrain from doing so? Were not the mules sold afterwards, and who received the purchase-money?

19. If you say, in answer to direct interrogatory No. 27, that you went to Mr. Nailor's house to see him on business, state whether then or at any time or place you did not represent to him that his wife, Mrs. Nailor, was extravagant in the use of money, and whether he, Mr. Nailor, did not reply "that was none of your business; give Mrs. Nailor all the money she wants," or words to that effect or of like import.

20. If you state, in answer to direct interrogatory 29, that any fine or fines were paid, state whose money paid the fine or fines.

143 *Deposition of James W. Clarke, One of the Complainants.* (*Filed May* 29, 1880.)

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHERINE CONLEY. } No. 6658.

Be it remembered that in pursuance of the commission hereto

attached, issued from the office of the supreme court of the District of Columbia, I, F. C. Dell, a commissioner of the circuit court of the United States for the western district of Texas, caused James W. Clarke, the witness therein named, and who is personally well known to me, to come before me on this 18th day of May, A. D. 1880, at my office in Eagle Pass, county of Maverick, State of Texas, and thereupon the said James W. Clarke, being by me first duly
144 cautioned and sworn on the Holy Evangely of Almighty God to testify the truth, the whole truth, and nothing but the truth, was by me examined upon the interrogatories and cross-interrogatories as follows:

1st. To the first interrogatory the witness answers: In Eagle Pass, Texas.

2d. To the second interrogatory — answers: I am.

3d. To the third he answers: I did; eight years and ten months; from August, 1862, to December, 1866, and from April, 1867, to May, 1868, and from December 25th, 1869, to May, 1873.

4th. To the fourth he answers: My wife is his daughter; this is my only relationship to him.

5th. To the fifth he answers: I was acquainted with Alison
145 Nailor, Sr., during his life, and from the winter of 1864 until his death.

6th. To the sixth he answers: I had the management of his estate and business (except that portion of his property occupied by his sons) from in the spring of 1870 until late in the fall of 1872. In my travels in Texas I have lost my memorandum book of my connection with his business, which contained exact data, and of which he had an exact duplicate, which should now be among his papers. I can now speak only of the dates approximately, but very nearly exactly.

7th. To the seventh he answers: It was at the request of Allison Nailor, Sr., himself that I entered upon the management of
146 his property and business, and under the following circumstances: My brother-in-law, Matthew Trimble, Esq., an attorney-at-law, and myself had entered into a partnership as claim agents, and Mr. Allison Nailor, Sr., placed the business of the collection of his rents in our hands; this business lasted about a month, during which time I attended on the part of the firm to Mr. Nailor's business. About the expiration of the month one of the tenants, occupying a store of Mr. Nailor's, fell behindhand with his rent, and turned over the contents to Mr. Nailor in satisfaction of rents due, and Mr. Nailor made me a present of the articles it contained, and allowed me the use of the store for their disposition, at the
147 same time requesting and empowering me to take the sole management of his business. Trimble and myself dissolved, and I took control of the business on the 18th March, 1870.

8th. To the eighth he answers: Mr. Nailor was growing old, and had become so much a slave to intoxication as to have lost interest in business, and so habitually incapacitated for its transactions, by frequent intoxication, that in the rare intervals of sobriety he believed it was necessary to have his property under other control than

his own for its protection against his own acts when drunk, and in one of those intervals appointed me the manager of his prop-
148 erty. He apprehended that advantage would be taken of his condition when under the influence of liquor to impose on him, as had been done.

9th. To the ninth he answers: I have, to a certain extent, answered this in my preceding answer; at first, while he lived at home, Mr. Nailor was occasionally, but rarely competent and able to transact his business—that is, when not intoxicated or suffering from the direct and immediate effects of a debauch; but generally was thoroughly incapacitated because of almost continuous intoxication; subsequently after leaving home his debauches were nearly continuous, and were carried to a greater excess, and the inter-
149 vals of sobriety were exceedingly rare, and even in those intervals he was thoroughly prostrated by severe illness, the consequence of an antecedent debauch, and was, on some of these occasions, thoroughly childish, and in others, when not childish, manifested great aversion to enter upon any matter of business.

10th. To the tenth he answers: When I first knew Mr. Nailor, although not so intimately acquainted with him as afterwards, he was addicted to occasional sprees, but was a good business man, and as far as I observed in sound health; he was an habitual user of intoxicating drinks. There was a decided change in him during the time that I knew him in relation to his mental and physical
150 condition. I saw a good deal of him in 1867 and up to May, 1868; his habits and his mental and physical condition had changed for the worse from the time of my first acquaintance with him. I did not again see him until December, 1869, when his condition was what I have described it as in the spring of 1870. His mental powers were then so much impaired that he would have given me any or all of his property without apparent appreciation that he was depriving himself or doing an injustice to his family. His condition had changed from the time of my first acquaintance with him from a capable man of business by degrees into the complete slave of appetite and its indulgence having neither
151 will, complete memory, or the power of concentrated attention on any subject. He seemed to forget matters of grave moment, and would not remember one day the engagements of the preceding day. From 1870 to 1873, when I left Washington, his health was so bad that I should at no time have been surprised to hear of his death.

11th. To the eleventh he answers: During time that I had charge of his business I boarded in his house, where his family lived, and where he lived himself until he separated himself from his family and went to live with Mrs. Conley. I had opportunities of seeing him there daily, except during certain times when he absented himself from home for several days at a time; in fact, until brought home by his friends. These absences were always caused by
152 a debauch, and became more and more frequent until he remained away entirely, remaining permanently with Mrs. Conley. After taking up his residence with Mrs. Conley I would

occasionally see him on the street; these occasions occurred irregularly, with intervals sometimes of two or three weeks. For the last year of my connection with his business I saw him very rarely, and found it difficult to procure an interview with him, and on nearly every occasion that I succeeded in gaining access to him found it impossible to arouse him to any interest in his business or to procure from him any, even the most general, direction as to anything connected with it, but never on any occasion could obtain
153 any satisfactory direction about any matter.

12th. To the twelfth he answers: I believe I have fully answered this in almost every respect in my preceding answers. My observation of his hardest drinking was during the years 1871 and 1872; after 1st of May, 1873, I have not seen him twice; its effects, in my opinion, was the destruction of both his health and mind.

13th. To the thirteenth he answers: With regard to his health lattery, I never met him once but that he spoke of his sufferings; every indication of his features was that of the last stages of alcoholism; his face was swollen, bloated, and blue; he was excessively nervous, and his conversation and his manner of speaking
154 about his business, and the fact that he could not fix his attention on any matter indicated to me that his mind was seriously impaired.

14th. To the fourteenth he answers: I cannot say how often, but frequently in the course of the three years that I was his manager. Necessarily I conversed with him in the interviews I have testified to.

15th. To the fifteenth he answers: I have, to a great extent, answered this already. His conversations were many times senseless, showing flighty and unsettled state of mind, abrupt changes from subject to subject, without connection or any train of connected ideas. He would forget from moment to moment what he
155 had been saying. At other times, when he was perfectly sober, he would be rational and a competent business man. This was during the earlier period of our connection, and on similar occasions afterwards he manifested a strong desire to sever his connection with Mrs. Conley and her set, and to have it arranged for his return home, but would elapse before anything could be done. During the last year of my connection with the business of Mr. Nailor (except on two of the occasions that I obtained access to him) I found him confined to bed, and his condition I have described. On those two occasions I found him in a little store kept by Mrs. Conley, acting as a salesman, retailing articles from a stock,
156 the whole value of which could not exceed an hundred dollars, taking a childish interest in the sales, and found it impossible to gain his attention to business of his own, with respect to which I was visiting him and involving large interests.

16th. To the sixteenth he answers: I do not think that he was, though he would have been if separated from the influences under which he was held, and been allowed time for the restoration of his

faculties with proper treatment and abstinence from intoxicating liquors; as it was, he would not.

17th. To the seventeenth he answers: I did not see him at all during 1878.

18th. To the eighteenth he answers: I do.

19th. To the nineteenth he answers: I know of his having
157 been with her and have heard him speak of her as his "little Irish rooster." Before his abandonment of his home he would at times be gone for some days at a time, and when hunted up would be found at some house with her. When under the influence of liquor he would speak very frequently and freely of her. He would speak to others in my presence of her meritricious attractions and excellence. After he left — house I know that Mr. Nailor lived at Mrs. Conley's house, and orders for money from him were always brought to me directly from that house. By Mr. Nailor's direction, on January 26, 1872, I paid seventy-nine dollars $\frac{60}{100}$, fine and cost in causes No-. 9160 and 9161, criminal court of the District of Columbia, against Mrs. Conley, and other sums.

158 20th. To the twentieth he answers: She came to me once that I recollect of, just a little after he left home. I had a contract for delivery of stone. I was hauling it from 6th street wharf. She came to me at the wharf and demanded some money for a team of mules she said she had working for the Board of Public Works. I told her I knew nothing of her having a team of mules; that I had a pair working which had been given me by Mr. Nailor, and told her to go off and not come about me; that I did not want to talk to her or have anything to do with her. She made some threat—I do not recollect what it was—and went off. I had seen her once before. I had noticed a party moving into a house
159 under my charge on E street, near National Theatre, between 13th and 14th streets. I immediately went in to ascertain who they were and by what authority entering, and found Mrs. Conley. To my inquiry as to why she was there, she informed me she had rented the house from Mr. Nailor. I told her I had already rented the house, and had received the rent in advance, and that she could not occupy it. To the best of my recollection, she came to me also at the store I have referred to in previous answers while it was in charge of a man named Pixon, or a man named Kyler, and brought from Mr. Nailor an order either for money or provisions.

21st. To the twenty-first he answers: My recollection is that
160 she came to me on one occasion with an order for money, purporting to have been written by Mr. Nailor, the body of which was written in a strange hand; but the signature, though written by Mr. Nailor, indicated so discomposed a condition that I refused to pay it, and it was not again presented. I received others of the same character at the hands of her errand boy, which were treated in like manner.

22d. To the twenty-second he answers: I saw them together, to my recollection, two or three times; I think three times.

23d. To the twenty-third he answers: She seemed to have great influence over him; he seemed to be afraid to say anything to me in

her presence. The fact that he remained with her, and that when absent from her and sober expressed a desire to go home
161 to his family, and when remonstrated with about living with her would turn and walk away; that he had an elegant home and every luxury and comfort at home, and would remain with her, abandoning his business, family, and property, assisting her in the little store in a mean house, the difficulty of approaching him in her house, and all the circumstances I have already mentioned, and many incidents I cannot now recall, are the facts upon which I base my opinion that she completely dominated his will. I have attempted to see him at her house fully thirty times, and did not succeed in accomplishing more than a half a dozen times; some
162 of these when she was absent. She sometimes told me he was not there when I afterwards discovered that he was at the time in the house, and when she acknowledged his presence she would say she would go to see him and come back and report that he refused to see me. On one of these occasions I insisted peremptorily because of one of his cases coming up in court, and it was necessary that he should be personally present at the trial. I found him in bed prostrated from the effects of drunkenness. He would not be induced to attend the court at the trial of a suit against his wife, where his presence was urgently required, but did attend the court with Mrs. Conley when she was twice tried for a
163 scandalous offence and settled her fines, and reproached me for paying the judgment of $100.00 against his wife out of his money.

24th. To the twenty-fourth he answers: Mr. Nailor, about April, 1872, bought a pair of mules for me at his own suggestion. I hired a wagon and had it made into a stone-wagon, and procured employment for it from the Board of Public Works. He told me to give the proceeds to my wife, his daughter Marian. I have already stated the conversation with Catherine Conley on the subject. I had them at work about two months when Mrs. Conley made the demand I have stated. Mr. Nailor never spoke to me on the subject; but I missed them and the wagon, and my driver, Charles Masier,
164 reported to me that they had been taken by Mr. Nailor and Kate Conley and carried to her house. I saw them afterwards working as her mules for different contractors.

25th. To the twenty-fifth he answers: I have already stated what occurred between myself and Mrs. Conley. Mr. Nailor was then stopping at home on 13th street, the family residence. On that evening I told him in his room that Mrs. Conley was moving into that house, saying that he had rented it to her, and that I had stopped her. He seemed to be amazed at my action, and I think he told me I had better let her have it, and I told him that I would not do it, as I had already rented it and had received a month's rent in advance, and he acquiesced and never after referred
165 to it. The rental of the house was $25 per month.

26th. To the twenty-sixth he answers: I never received any verbal order, but have paid many written orders for money from Mr. Nailor brought to me by a boy in the employ of Mrs.

Conley. I can attach but one to this deposition, as I can find but the one. I have never been careful to keep them, and they have been lost in my many changes of place while in Government employ. The one I attach is in his handwriting, and is preserved accidentally; the others will appear entered on the account-book I have referred to, which should be among the papers of the estate as so much cash to him. Very frequently the orders were in other handwriting and signed by him.

166 27th. To the twenty-seventh he answers: I believe I have fully answered this in preceding answers.

28th. To the twenty-eighth he answers: I know that the representations made by Mrs. Conley, as to his absence from the house and refusal to see me, were untrue, because, subsequently to those visits, I have met Mr. Nailor, and he would ask me why I had not reported certain matters to him, and I would refer him to the fact that at certain times I had been to the house of Mrs. Conley to see him with reference to the matters, and had been told by Mrs. Conley that he was either absent or refused to see me, and he invariably replied that he was at the house at the time and had not been away.

29th. To the twenty-ninth he answers: He was a party to

167 several suits during the time; in one, a prosecution for a nuisance in building a house, known as the Park House, over an alley, pending in the police court, and involving an interest to Mr. Nailor of $15,000, though using every endeavor to do so, I could not induce him to attend; subsequently, on appeal, we had three trials of seven days each, and I was enabled to procure his occasional attendance. We had him at home a part of this time. In others I could not get him to attend. He did attend Mrs. Conley to the court, and remained with her, seated by her, during the whole time of her trial for a scandalous offence in two cases, and when she was convicted I was directed by him to settle the judgment

168 in the two cases, which I did, and took a receipt, which I hereto attach, marked Ex. B. The cases were Nos. 9160 and 9161 in the criminal court of the District of Columbia. I do not recollect what the particular offence charged was, but she was found guilty in each.

1st X. To the first cross-interrogatory the witness answers: I have resided in Eagle Pass, where I now live, since February 12th, 1879. I resided in Washington, D. C., from August, 1862, to December, 1866, and from April, 1867, to May, 1868, and from December 25th, 1869, to May 1st, 1873.

2d X. To the second cross-interrogatory he answer-: I lived in the house of Allison Nailor, Sr., from December, 1869, until

169 October or November, 1872. I never was employed in or about, or have been inside, the custom-house at Georgetown, D. C. I was never arrested for any delinquency or dereliction as an officer of the Government. I have been constantly in the employ of the United Stases in a position of honor and trust since 1861, with the exception of the three years I was managing Mr. Nailor's business. I was arrested about January, 1869, while in Washington on leave of absence, on a charge which, I believe, was maliciously

brought, of obtaining money under false pretences. I gave bond at once, and Mr. George Hall was not one of my sureties. I remained in Washington until the charge was disposed of, all of the
170 time demanding trial, which was constantly postponed at the instance of the prosecution until it could not longer be denied me, and the charge proved groundless and I was discharged. My bail was not forfeited, and Mr. Allison Nailor, Sr., no*t* any one else ha*ve* it to pay for me. He was not angry with me at all, but, on the contrary, was my warmest friend and denounced the prosecution against me as a malicious outrage from the commencement, and about a year afterwards gave me entire charge of his business. So far from my standing in the Government being implicated, I was then holding a position of $3,000.00 a year, and the Secretary of the Treasury extended my leave until the matter was settled.

171 3d X. To the third cross-interrogatory he answers: I never collected money for Mr. A. Nailor, Sr., during Mr. Bowen's mayoralty, or at any time which I kept and failed to account for. My books showed every dollar of money collected for Mr. Nailor, and showed the disposition of it. Why I was discharged I do not certainly know; there were no reasons assigned, and the facts indicated did not exist. I met him twice afterwards and he expressed both satisfaction with and esteem for me.

4th X. To the fourth cross-interrogatory he answers: Mr. Matthew Trimble was associated with me for one month in the management, as I have stated in answer to the direct examination. I turned the business over to his son, W. T. Nailor, who kept it about two
172 months, and it was then taken from him and given to the other son, who managed it until after I left. I do not know anything subsequent; before my management Mr. Nailor, as well as I am informed, managed it himself.

5th X. To the fifth cross-interrogatory he answers: At the time of my employment I was doing a reasonably remunerative business as a claim agent, which gave me employment. My being his son-in-law may have directed his attention to me, but flatter myself that it was my business qualification and the confidence he had in me that secured me the appointment.

6th X. To the sixth cross-interrogatory he answers: The first inquiry in this I have answered as fully as I can in my answers to direct interrogatories.

173 I accounted to him as fully as I could. I never could induce him to go over my books with me and settle. I endeavored constantly to arouse him sufficiently to receive my accounts and reports and act on them, but rarely secured the slightest attention to it; and, as I have stated above, could never get him to examine my account of monies received and expended, nor, even after I had given up his business. I never retained a cent of his except my legitimate pay, and all that I received has been accounted for. I did pay all taxes, except such as he directed me to leave to him to him to settle, involving some old questions of back taxes, and those he prohibited my settling, and I could never induce him to
174 do so, though I many times urged him. I directed all of the

repairs to his property while under my control, and superintended their execution and paid for them. I have accounted for all monies received, as hitherto stated, and have made payments to him, for which I have vouchers, and will produce on the demand of Mrs. Conley or her attorneys when she establishes her right to an account of the management of Mr. Allison Nailor-, Sr., estate, but decline attaching to my answer to interrogatory in this case, where they are not in question, as they are of value to me, but will produce them before the court on a *subpœna duces tecum*.

7th X. To the seventh cross-interrogatory he answers:
175 I have stated, as fully as my recollection serves me, the particulars inquired into, in my previous answers, and after the lapse of time cannot state time, place, and circumstance with greater particularity. I have answered every question in this interrogatory. My interviews were of various lengths, sometimes but a moment and sometimes for hours. I left Washington 1st May, 1873, and have been absent since. I left his house about October, 1872, and saw him twice afterwards.

8th X. To the eighth cross-interrogatory he answers: Don't know what time you refer to.

9th X. To the ninth cross-interrogatory he answers: I have seen him, in the time I was with him, a great many times incapacitated, as I have stated, but cannot specify particular
176 dates; at his house, at my store, in the streets, at Burk's store, corner of 13½ and D—at least 100 times; at Lacy's saloon, from which I have taken him; at the Park House; at his house on the Island, where he was living with Conley. On one of the occasions, when I was carrying him home, he bit me in the arm through my clothes, of which I have still the scar.

10th X. To the tenth cross-interrogatory he answers: I have not seen him since April, 1873; before that I saw him as stated hitherto in my answers.

11th X. To the eleventh cross-interrogatory he answers: He had a disposition to jocularity, but not unusually so.

12th X. To the twelfth cross-interrogatory he answers: The reasons I have stated already and as particularly as I can, par-
177 ticularly his weakened mental and physical condition, and the influence Mrs. Conley was thereby exerting over him. I do not remember the name of Randall connected with him or his business.

13th X. To the thirteenth cross-interrogatory he answers: No.

14th X. To the fourteenth cross-interrogatory he answers: I cannot specify more fully than I have done, and I was then in his employment.

15th X. To the fifteenth cross-interrogatory he answers: She never asked me for money, except about hire of the mules, without an order for it, and then for Mr. Nailor's money. I do not recollect who was present on the several occasions.

16th X. To the sixteenth cross-interrogatory he answers: I have never seen Mr. Nailor and Mrs. Conley more than three times together; those occasions were at the house on E street, where Mrs.

Conley lived; no one was present but we three. I cannot
178 fix dates. He was in bed, and she remained in the room and allowed me no opportunity of private conversation with him. I could extract not a word from him, and she said nothing, but waited, watching me. I cannot fix the dates of these interviews, but they were during the winter and spring of 1872. I went to see him in relation to his business. I never would go to Mrs. Conley's house except when the necessity of seeing Mr. Nailor compelled me.

17th X. To the seventeenth cross-interrogatory he answers: I have never heard them converse together except with relation to their little store; his manner was timid and apprehensive in her presence; hers was a self-asserting position and defront. I was there to
179 talk business to Mr. Nailor, and it was in Mrs. Conley's house, in the latter part of 1871 and early part of 1872; necessarily I would not be a quiet witness of an imposition practiced on him, and my knowledge of the instances in which advantage has been taken of him or his condition have been matters of irresistible interference. Until the failure of his health and mind and abject subjection to Mrs. Conly, he had born- the reputation of an independent, obstinate, self-judging, and excellent business man. An instance of his change is the taking the mules and wagon, and the other instances I have mentioned.

18th X. To the eighteenth cross-interrogatory he answers: I have stated how Mr. Nailor gave me the mules; he gave me no
180 bill of sale, but delivered them to me. I knew the mules were not the property of Mrs. Conley, and that she did not hire them to the District of Columbia. Mr. Nailor drew from me the money to pay for them. After Mr. Nailor's delivery of them to me they were mine, and I entered them as mine and received the money for their work, and did not give it to Mrs. Conley or Mr. Nailor, but to my wife, as I had been told to do by Mr. Nailor when he gave me the mules. Mr. Nailor never threatened to have me arrested, nor was prevented from doing so by the intercession of my wife. I do not know what was done with the mules by Mrs. Conley, but presume their price has gone, like so many thousands of its fellow-dollars of Mr. Nailor's, into the insatiable pockets of
181 Mrs. Conley.

19th X. To the nineteenth cross-interrogatory he answers: I made no such remark and had no such reply from Mr. Nailor; on the contrary, he grumbled to me about the expenditures at Mrs. Nailor's home, and by Mrs. Nailor, and particularly resented my payment of the judgment referred to against Mrs. Nailor.

20th X. To the twentieth cross-interrogatory he answers: The money of Mr. Allison Nailor, Sr., and was paid by me by his positive direction.

J. W. CLARKE.

UNITED STATES OF AMERICA, } ss:
Western District of Texas, }

I, F. C. Dell, a commissioner of the circuit — of the United States for the western district of Texas, do hereby certify that in
182 pursuance of the commission hereto attached, and the stipulation of the solicitors for the parties attached hereto, I caused the witness, James W. Clarke, to come before me at the time and place set forth in the caption of this deposition, and after being duly sworn by me, as set forth therein, the said witness made answers to the interrogatories and cross-interrogatories attached to said commission, which are herewith returned, together with said commission and stipulation of counsel, and said answers were written down by me in the presence of said witness as he delivered the same, and afterwards signed by said witness in my presence, and the same are herewith returned.

183 I further certify that I am not of counsel or attorney to either of the parties to said suit nor interested in the result thereof.

Given under my hand and seal, at office, in the town of Eagle Pass, county of Maverick, western district of Texas, this 21st day of May, A. D. 1880.

F. C. DELL,
U. S. Commissioner, Western Dist. of Texas.

Ex. A.

J. W. Clarke:
Send me ten dollars.
Jan'y 12, 1872.

ALLISON NAILOR.

Ex. B.

Rec'd, Jan. 26th, 1872, of Alison Nailor seventy-nine dollars $\frac{60}{100}$, in full for fine and costs, *fi. fa's* Nos. 9160 & 9161, District of Columbia *vs.* C. Conley.

A. SHARP, *M'sh'l,*
Per L. M. GRAVES

184 In the Circuit Court of the United States for the Western District of Texas, at San Antonio.

I, W. C. Robards, clerk of said court, do hereby certify that F. C. Dell, whose genuine signature is affixed to the foregoing certificate, is and was a commissioner of the United States for the western district of Texas at the time of filing said certificate, and that all of his official acts are entitled to full faith and credit.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at San Antonio, Texas, this 24th day of May, A. D. 1880.

[SEAL.]

W. C. ROBARDS,
Clerk of said Court.

185 *Notice to take Testimony for Complainants.*

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHERINE CONLEY. } No. 6658.

To Messrs. Carrington & Carrington, sol'rs for defendant:

We hereby give you notice that on Monday, the 28th day of April, A. D. 1879, at 3 o'clock p. m., at the office of William A. Cook, Esq., No. 617 Louisiana Ave N. W., Washington, D. C., before Arthur Browning, Esq., an examiner in chancery of the supreme court of the District of Columbia, we shall proceed to adduce testimony on behalf of the complainant in the above-styled cause in support of the allegations of the bill filed therein.

Very respectfully,

COOK & COLE,
Sol'rs for Compl'ts.

Service acknowledged this 24 day of April, 1879.

CARRINGTON & CARRINGTON,
Sol'rs for Def't,

186 *Certificate of Examiners in Chancery to Volume One.*

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHERINE CONLEY *et al.* } No. 6658.

We, Arthur Browning and Irving Williamson, examiners in chancery for the supreme court of the District of Columbia, do hereby certify that the annexed depositions, included in vol. one (1), being from pages (1) to two hundred and twenty-nine (229), both inclusive, were reduced to writing by us respectively in the presence of the witnesses therein named and in the presence of the counsel for the complainants and defendants, the said witnesses having been first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters in controversy in the above-styled cause.

ARTHUR BROWNING, [SEAL.]
Examiner in Chancery.
IRVING WILLIAMSON, [SEAL.]
Examiner in Chancery.

187 *Deposition of Washington T. Nailor, One of the Complainants.*
(*Filed Jan.* 13, 1881.)

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHERINE CONLEY. } No. 6658.

TUESDAY, *April 29th*, 1879—2 o'cl'k p. m.

Met pursuant to notice hereto attached at the office of Col. Wm. A. Cook, No. 617 La. Ave., Washington, D. C.

Present: C. C. Cole, of counsel for the complainants, and Messrs. Carrington and Rutherford for the defendant, and the witness, WASHINGTON T. NAILOR, who, being produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

Q. Are you one of the plaintiffs in this suit?
A. Yes, sir.
Q. Where do you reside?
188 A. At the Imperial Hotel, in this city.
Q. How long have you resided there?
A. A few days.
Q. Where did you reside before that time?
A. At 612 on 13th street.
Q. How long did you reside there?
A. I think since last September.
Q. What relation were you to Allison Nailor, senior, now deceased?
A. A son.
Q. When did your father die?
A. January the 6th, 1879.
Q. State who are his other heirs?
A. Allison Nailor, junior, Rachel E. Trimble, Frances Marion Clarke.
Q. Did he leave a widow living?
A. Yes, sir; Rachel D. Nailor.
Q. Is she the mother of the children above named?
A. Yes, sir.
Q. Where was your father living at the time of his death?
A. With a prostitute on 12th street, at No. 306, with Kate Connally.
Q. How long prior to his death had it been since he lived
189 with your mother?
A. Since the fall of 1870.
Q. Where did he live from the fall of 1870, when he left home, until the time of his death?
A. On 17th street between D and E; on E street between 17th and 18th streets; on E near 21st or 22nd; on 14th street south; on 8th street between L and M; again on 14th street south; and afterwards at 306 on 12th street, and at other places.

Q. Who, if any one, lived with him during any or all of this time, or with whom did he live?

A. Miss Kate Conley, during all that time, and at all those different places.

Q. Where did your mother live during that time?

A. At 612 on 13th street N. W., in this city.

Q. In whose house?

190 A. My father's.

Q. Do you know Kate Conley?

A. I do.

Q. How long have you known her?

A. I think since about 1869.

Q. Where did you first see her?

A. On 12th street.

Q. When did you first see your father with her?

A. I think before he left home, in the same house that Kate Conley lives in now.

Q. About how long was this before he left home?

A. About one year, I think.

Q. Was she living in that house at that time?

A. I suppose so.

Q. Who owned the house at that time?

A. My father.

Q. How often did you see her in that house before your father left home?

A. I cannot recollect, but I don't think many times.

191 Q. State, if you know of your own knowledge, whether she lived in any houses belonging to your father before he left home; if so, for about how long?

A. I cannot recollect now.

Q. State, if you know, about what time your father became acquainted with Kate Conley.

A. It was some time before he left home, but where I cannot tell; I think at a house on 12th street called the "Iron-Clad" or "Iron Door;" it had been a house of prostitution for years.

Q. State fully the circumstances under which your father left home.

A. The last time he was home I went after him when he was on a spree and brought him home. He got very abusive to both mother and me, and persisted on going again; started out of

192 the house once, twice, or three times. I would go out in the street and bring him in again, and each time mother begged and tried to make him stay. The last time he went out as far as the corner of 13th and F streets, about one-half a square from the house. I went after him again, and brought him back; he became more violent and abusive to mother and me; we both begged him to stay, but he would go; I then let him go, and would not go after him again. He did go, after we had done all in our power to keep him at home. He then left, and that was the last time he ever was in our house.

Q. When you went to bring him home on this occasion,
193 where did you find him?

A. I think on 17th street, where he was with this woman Conley.

Q. Did you see her on that occasion?

A. I think I did.

Q. Was your father with her?

A. Yes, sir; wherever it was; but it might not have been at that house.

Q. Both in the same room?

A. Yes, sir.

Q. What sort of room was it?

A. To the best of my knowledge, it was on 17th street, in the second story and the front room of the house, and in a bed-room.

Q. What time of the day was it?

A. Ten or eleven o'clock at night; it may have been later.

Q. Who, if anybody, went with you on that occasion?

A. The time I speak of may not have been the last time I
194 took him home, but on this particular night I know my father was up to this house on 17th street, between D and E, with this prostitute, Kate Conley. It was late at night, and I rode or drove past. It was raining very hard. There were no houses on the opposite side of the street from this house. I noticed across the street two females standing in the rain. I did not know or think who they were. I went home some time after. My sister was very much excited at the time, and [told me that mother and our old servant woman, named Lavina, had gone to look after father]. (That portion of answer in brackets objected to by def't as hearsay.) It
195 then occurred to me who the two females were standing in the rain across the street from this house. I immediately went up to 17th street, and found my mother and an old servant standing opposite the house in the rain. I then tried to get mother and the old woman to go home. I then went into this house, went to the second-story front room, and thought I could get my father out the back way without my mother knowing it. He would not answer me. I could hear whispering in the room. I then broke the top part of the door out. This woman Conley then tried to keep me out of the room, and gave me some abuse about
196 my mother. I hit her and knocked her down. I then got into the room, and probably hit her several more times. I found my father in the room with her, and both undressed. I then took my father home.

Q. State what your father's condition was at that time.

A. Very much under the influence of liquor.

Q. State what efforts you made to induce him to go home, if any.

A. The day after I struck this prostitute she had me arrested and fined, I think about twenty-seven dollars. My father would always go with me after I got large enough to force him to go, if he did not want to. I cannot remember whether on that occasion I had to urge him to go or not.

Q. What, if anything, did Kate Conley say at that time about his going home with you?

197 A. I don't recollect. I don't think she had time.

Q. Was this the night on which you say your father left and went back after you got him home?

A. I cannot recollect at present whether it was or not.

Q. About when was this last occurrence you have been speaking of?

A. I cannot state the year now, but I can find out from the police court records.

Q. About how often did you go for your father to take him home prior to the time of his leaving home finally—say for the last year or two of his remaining at home?

A. A great many times.

Q. Where did you generally find him on these occasions?

198 A. Always in the lowest drinking places or the commonest houses of prostitution in the city.

Q. How frequently on those occasions did you find him with Kate Conley?

A. I cannot say that; I recollect very well another occasion, when Kate Conley lived on E street, near the observatory, I went there; she denied to me that my father was there; she afterwards acknowledged that he was, but she would not let him come; she said I could not get in, as she had a big dog in the house, which I could hear barking; she was at the second story front window; she not only said she would not let him come away, but gave me some impudence; I picked up a paving stone, threw it at her; it went

199 through the blind and sash; she then left the window; I then tried to break in the door, and heard her urging this dog; before I could break in the door the man I had watching the back part of the house called me, and said my father had come out the back way; I then got him, and took him home; there were a great many other occasions that I found my father with Kate Conley, at different places and about the time that he finally left home.

Q. What was your father's habit in relation to the use of intoxicating drink prior to and at the time of his leaving home?

At this point the examination was adjourned until Wednesday, the 30th of April, at 8 o'clock p. m.

A. BROWNING,
Examiner.

200 WEDNESDAY, *April 30th*, 1879—8 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel on either side and the witness, WASHINGTON T. NAILOR; whereupon the direct examination of the latter was resumed, as follows:

By Mr. COLE:

Q. Question repeated left at last examination.

A. He has been drinking ever since I can recollect, and would go

on sprees for weeks at the time, and towards the last he kept getting worse.

Q. Say the last two years that he was at home, about how frequent did he go on the sprees as you mention?

A. Very often.

Q. When he went on such sprees to what extent did he become intoxicated?

201 A. I have seen him very drunk, and these sprees at times would last for two or three weeks; sometimes they would not be as long.

Q. And would he be drunk all the time he was on the sprees?

A. Yes, sir; that is, as often as I would see him. If he was not drinking he would not stay away from home.

Q. About what proportion of the time during the last two years he was home, or about home, was he drunk or under the influence of intoxicating liquors?

A. Sometimes he would stay for two or three weeks, and then go off from home for two or three weeks; sometimes he would stay home two or three days, and then go off for two or three

202 weeks. The time of his being on and off sprees during that time was pretty evenly divided; at any rate, toward the last few years he stayed from home more than during the previous years.

Q. What effect, if any, had his drinking produced upon his health and his mind at the time he left home?

A. His health kept getting worse, naturally, from drinking and exposure which he would go through while on these sprees. As far as his mind —, I have often noticed that it was impaired very much; worse in latter years than when he first began to drink, and while he was on these sprees he was not competent to attend to business of any kind; nor neither would he hardly ever attempt to

203 attend to any business. About all that he would do would be to squander all he could get hold of, or allow a gang of thieves or prostitutes to rob him.

Q. What was the usual health of your father in years before it was impaired by drinking?

A. As good as any man's.

Q. What was his occupation or business as long as he had any?

A. Livery business, mail contractor, farming, and speculating in most anything.

Q. How long did he live in Washington?

A. About fifty years; I think he has lived here ever since I can remember and for some years before; I am thirty-five years old.

204 Q. State whether he was at time during his life, since you can remember, an active, energetic business man, and up to what time he continued to be such.

A. Up to the year 1862 or '3, I don't think there was a smarter or more shrewd business man in Washington, except when he was on these sprees I have spoken of, and had, up to that time, accumulated all the property he had, and he has not accumulated a single dollar's worth of real estate since; but, on the other hand, since 1862 or 1863 he has gotten rid of a great deal of property, and neglected it, and

would not keep it in repair and pay taxes on it, and did not seem to care about trying to make any more; and had he not been
205 unfortunate about drinking I think he would have been one of the wealthiest men in Washington.

Q. From and after the year 1862 or '3 what were his business habits up to and until he left home?

A. They were very poor, and he did not attempt any business. He has not been in any business since about 1862.

Q. What attention or care, if any, did he bestow upon his property, say, from 1862, up until he left home?

A. Scarcely any. He would leave it to first one and then another of the family, before he left home, to attend to.

Q. Up to what time did you remain at home as a member of your father's family?

206 A. Constantly up to 1870, and after he left home.

Q. What was your mother's treatment of your father during the time that he remained at home?

A. As good as that of any wife on earth could have been.

Q. Do you know whether any efforts were made by her, or any other members of the family, to induce your father to return home after he had left and gone to live with the defendant?

A. I have known mother not only one time, but hundreds, to go after him by herself, and get him out of the commonest drinking places in town; also to houses of prostitution; and I have often known her to come, when they lived in Montgomery county,
207 Maryland, eight miles, and drive here to the city at nights, both in winter and summer, and find him in some low place and take him and drive back to the farm with him; sometimes she would come by herself, and sometimes with some members of the family; and it was about the same when living in this city, previous to our living in Montgomery county, and also since we returned from the farm and have lived here, and up to the time that he left home for good. I know she did all in her power. I know that mother used every and all means in her power, after he left home, to induce him to return, and that before she brought her suit
208 against him for a separation I know that I have been after him when he was on these sprees hundreds of times, both day and night, before he left home. I have been after him since, and have talked with him a great many times to get him to leave this woman Conley and to go home. I have threatened and hit this woman Conley, and I also talked with her and offered to pay her out of my own pocket any reasonable sum if she would leave him, or make him leave her, as I was anxious to save the family from disgrace, and also to save my mother from so much worry.

Q. In your answer to the last question you speak of your father's living in Montgomery county, Maryland; when and how long did he live there?

209 A. From about the year 1854 or 1855, to 1861 or 1862.

Q. Then, in your answer to a former question where you state that he had lived in Washington for fifty years, do you mean to be understood that he lived here fifty years in succession?

A. With the exception of the time when he lived in Montgomery county, and when he lived in Montgomery county he was transacting business in Washington.

Q. How frequently did you see your father after he left home in 1870 and went to live with the defendant?

A. I saw him very often.

Q. What were his habits as to the use of intoxicating liquors
210 after he left home and up until the time of his death?

A. He was a drinker, and I have seen him very tight.

Q. State whether the frequency or intensity of his drinking and spreeing became enhanced after he left home?

A. Yes, sir.

Q. To how great an extent?

A. I have seen him a great many times when he was unfit to attend to business. I did not see him as often after he left home as I did before, but I saw him drunk afterwards quite as frequently.

Q. What business, if any, did he do after he left home?

A. None.

Q. Who looked after his property and collected his rents for him after he left home?

A. For awhile James W. Clarke, his son-in-law, then I did
211 for awhile, then my brother, Allison Nailor, junior, and just previous to his death, or a few months before, I did again.

Q. How long did you attend to his business for him before your brother Allison commenced?

A. Only a few months.

Q. What was the reason of your quitting, if any?

A. After I had collected for a few months and we were settling up I showed him where I had given mother some money, and he told me not to give her any more; I then told him if he thought that way I would have no more to do with it. I gave him what I had left and he gave me a receipt in full and I quit.

Q. After he left home where and how did he spend his time?

212 A. In this city with this woman Conley.

Q. In answer to a former question you have given the houses in which he lived after he left home; whose houses were they?

A. Three of them belonged to my father; the others were rented by him or Kate Conley, I don't know which.

Q. Do you know how much of the time he spent in and about the house and in her presence?

A. I have seen him very often in those houses with her, and I know that he would sometimes stay there for two or three weeks at a time without coming out, and I think spent a majority of his time there.

Q. Do you know of his having gone away from the city with the defendant at any time?

213 A. Never, except going to Montgomery county with her.

Q. How frequently did you know them to go there together?

A. I have heard it often; I have never seen them there; I know of their having gone there.

Q. State whether you were acquainted with and knew your father's physical and mental condition in the latter part of March, 1878.

A. Physically, he was in a very bad way; he was in very bad health, and his mind was very much impaired; he was old, feeble, and childish.

Q. State whether, in your opinion, he was mentally capable on the 29th day of March, 1878, of transacting and fully comprehending important business, and whether he was competent on that
214 day of making the conveyances to the defendant mentioned in the bill.

A. I most positively think that he was not competent.

Q. What was his physical and mental condition in 1872—say, in November of that year?

A. I dont think it was good, and don't think it has been good for the last eight or ten years.

Q. State whether, in your opinion, he was competent on the 27th of November, 1872, of making and comprehending the conveyance of that date to the defendant mentioned in the bill.

A. I do not.

Q. State what influence, if any, the defendant had or exercised over your father, if you know.

215 A. I know she had influence enough over him to induce him to leave a good home, a good wife, and his children, and to live with her, and to support her in luxury, and to make him deed her a great deal of his property.

Q. What knowledge, if any, have you of his appearing in court with the defendant at any time?

A. I saw them there together, and I knew he paid her fine.

Q. In what court was that?

A. In both the police court and the criminal court of this District, and in the same case.

Q. What about dates?

A. I cannot say just now.

Q. What was she prosecuted for on those occasions?

A. I think for selling liquor, on E street between 17th & 18th, without a license.

216 Q. What is the value of the property mentioned in the alleged deed of the 27th of November, 1872, filed with the bill?

A. I should think it ought to be worth $3,000.00 now.

Q. Is it in the same condition as to improvements that it was at the time of the conveyance?

A. It has been improved since by another story or French roof, and by general repairing and painting.

Q. About what is the value of the improvements that have been made since the conveyance?

A. I could not say that.

Q. Who made those improvements; at whose expense was it done?

A. I think at my father's.

Q. About when was it done, if you remember?

217 A. Since it has been deeded to this woman for the bastard child.

Q. What is the value of the property in the city of Washington embraced in the alleged deed of the 29th of March, 1878, filed with the bill?

A. They should be worth at least $11,000.00.

Q. Has there been any improvements made upon this property since the date of the alleged conveyance?

A. Yes, sir; another story put on the house No. 306, on 12th street, where this woman now lives; on the other four houses there has been no improvements put.

Q. At whose expense was this last improvement made?

A. At my father's.

Q. What is the value of the property in Montgomery county,

218 Maryland, embraced in the two alleged conveyances of the 29th of March, 1878, mentioned in the bill?

A. I cannot say now, but I should think it was worth $10,000.

Q. At the time of your father's death what was the value of his estate, aside from the property embraced in the alleged conveyances mentioned in the bill?

A. I cannot state that without investigation, but will do so at some future time.

Q. How old was your father when he died?

A. About seventy-one years, I think.

Q. Where did he die?

A. At 306, on 12th street northwest.

Q. Who lived there at the time?

A. This woman, Kate Conley.

Q. From what house did his funeral take place?

219 A. From my mother's house, No. 612, on 13th street.

Q. How soon after his death was his body removed from the place where he died to your mother's residence?

A. The same night.

Q. What objection, if any, did the defendant make to such removal?

A. None to me, but did to Mr. France, a gentleman I sent there.

Adjourned until Friday, May 2nd, 1879, at 7 o'clock p. m.

A. BROWNING,
Examiner.

Further adjourned, by agreement of counsel, until Tuesday, May 6th, 1879, at 1½ o'clock p. m.

A. BROWNING,
Examiner.

220 TUESDAY, *May 6th*, 1879—1½ o'clock, p. m.

Met pursuant to adjournment.

Present: Counsel for the respective parties and the witness, W. T. NAILOR; whereupon the cross-examination of the latter was commenced, as follows:

By Mr. RUTHERFORD:

Q. You said something about the time and place when you met Kate Conley; can you fix that time and place more positively than when you stated it at first?

A. I stated it was on 12th street, but since then I am quite positive that I saw her on the corner of 13½ street and E street, which was previous to the time she was on 12th street.

Q. When was that?

A. Some time between 1865 and 1870. I can't say which
221 year. It was in a common restaurant and a place of lewd women.

Q. Did you ever see the defendant Conley at the house on 12th street, where she now lives, prior to 1879?

A. I swore that I did, and I don't think I am mistaken.

Q. Can you fix the date when you saw her there, and who was there, and under what circumstances?

A. It was previous to the summer of 1870. I went there after my father when he was on a spree. I think Mr. France and Charles Brown were with me.

Q. Who lived there?

A. I cannot say now. It was either a restaurant or a house of prostitution; that is my recollection.

Q. Do you know that the defendant Conley lived there?
222 A. She may not have lived there. To the best of my knowledge, I saw her there.

Q. Were you in the habit of going there frequently?

A. I have been to so many places and at so many times that I cannot say. My father had ten or twelve or more houses belonging to him that were rented as houses of prostitution or as drinking places, and when he went on sprees I would find him in first one place and then the other, and also in other places not belonging to him. I have been so many times in my life after him that it is impossible for me to now locate the places or fix the number of times.

Q. Do you remember your answer in the case of Allison
223 Nailor, junior, against Allison Nailor, senior, Kate Conley, and yourself?

A. I do not recollect it.

Q. Were the statements in that answer true?

A. If I swore to them they were. I don't recollect of having read it at all.

Q. What were your relations with your father after the divorce suit?

A. When he was not drinking we were friendly enough; when he was drinking he would abuse me fearfully at my own place, and

before my neighbors and customers and negroes. I never did him a dishonorable act in my life, and I don't think he would have abused me as he did if he had been in his right mind.

Q. Was there not some feeling between yourself and your
224 father in consequence of your taking sides with your mother in that suit?

A. There was none on my part, and I don't think he really had anything against me for it, although his actions showed that he had. He would abuse me to-day, for instance, and the next day would speak well of me to parties.

Q. What actions do you refer to?

A. When he was abusing me he would probably get after me at times because I would make remarks about him living with this harlot, and I have no doubt in my mind but that this woman would often get him to come after me and abuse me.

Q. Did his treatment of you differ from his treatment of your brother Allison; and, if so, in what respect?

225 A. I have heard him give it to him many a time when he was drinking. He would give it to all of us, and then afterwards he would be friendly.

Q. When your father was not drinking was he not of a kind and pleasant disposition, and what was his character when intoxicated?

A. He was quite a different man when sober, and had it not been for his drinking and keeping low company he would have been as good a man as any one.

Q. Do I understand you that when he was drinking he was hard-headed and hard to manage?

A. You do.

Q. Who was your father's agent at the time his rents were sequestered under the order of the court?

A. I cannot tell that now.

Q. Did he not attend to it himself.

226 A. I don't think he did. I can tell who was by to-morrow by some papers I have.

Q. Who was his agent before the commencement of the divorce suit?

A. I cannot tell now, but will to-morrow.

Q. Did he have any agent at all, or attend to his business himself?

A. I don't think he has attended to business for some years previous to that. Mr. Clarke was his agent, I was his agent, and my brother Allison was his agent. He changed about first one, then the other, as he felt like it. I have also seen, and have now in my possession, receipts signed by Kate Conley, but cannot state the date.

Q. How often did you see your father during the last year
227 of his life?

A. Nearly every day he was out.

Q. Do you remember your father coming to see you at your place of business?

A. I do, sir.

Q. How frequently would he make those visits, and how long would he stay?

A. It is impossible for me to state now. I made no memorandum of his visits. He was very friendly to me the last five or six months before he died.

Q. Did you have any business transactions with your father during the period referred to by you in your last answer?

A. I did, sir.

Q. What was the reason of your discontinuing to act as your father's agent?

A. Because he objected to my giving money that I collected
228 of his to my own mother.

Q. Did he not hold you to a very strict account?

A. I have a receipt in full from him. I did business with him, and he left it with me, and when the amounts were settled he gave me a receipt in full. I made out the statement myself and can produce it. He did not know what money I collected, and from what houses. I had powers of attorney from him, and was doing what I thought was best and proper. I gave mother all the money she asked me for. I spent some for repairs on the property. I gave him as little as I possibly could. My object in doing that was to prevent Kate Conley from getting it, as I knew she got all he
229 got, and I believe that if I could have carried my plan out a little while longer, by depriving him of money, I think this woman would have left him, and that he would have been home with his family.

Q. When was you your father's agent, and for how long?

A. I have been acting for him ever since I can recollect. About 1869 or 1870 he wanted me to attend to his business altogether. I told him I would not unless he gave me written authority. This was at a house on E street, between 17th and 18th street-, where he was living with this harlot. This same written authority I had up to the time of his death, and he never countermanded it.

230 Q. Will you please produce the authority and receipt that you speak of?

A. I will at the next meeting for taking testimony.

Redirect by Mr. COLE:

Q. State when you ceased to attend to your father's business as his agent.

A. A few days before his death.

Q. Did you attend to it all the time, from and after the execution of the power of attorney in 1870 or 1871, until a few days before his death?

A. No, sir; only at intervals.

Q. About what part of that time did you have charge of it?

A. Only a few months about 1870, and at different intervals from that up to 1878, and then for the last five or six months previous to his death.

231 Q. After 1870 who had charge of his business when you did not?

A. My brother, Allison Nailor, junior.

Q. Can you produce, at the next session for the taking testimony, receipts which you have referred to, given by Kate Conley, for rent?

A. I can, and will.

Q. State fully the business transaction or transactions which you had with your father during the last year of his life, referred to by you in your answer to a question on cross-examination.

A. I got a thirty-year lease from him on the stables I now occupy for fifty dollars a month and the taxes; I have attended to a great deal of business for him, and had a great many confidential
232 talks with him during the last few months of his life in regard to the way he was living, who he was living with, and what he was doing with his property. One conversation came up about his bringing this bastard child to my place of business; I told him that he must not let him come there again, as I did not think it was safe, because he might get struck on his head in a horse-trough and held there. He agreed not to bring the bastard there again, and we then had quite a talk. He cried like a child, and said that he knew he had been doing wrong, and would try and get away from this woman Conley and do better and lead a different life. I
233 then talked with him about giving deeds for his property to these bastards, that I did not believe were his children, and he acknowledged to me that he had done wrong and made a mistake in making the deeds, and that he did not believe that they were his children. I argued with him in this way: that a common woman could not be honest to any man, more particularly with a man of his age—about sixty-three or sixty-four years of age.

Q. About what time was this conversation you have just spoken of?

(The preceding question and answer of the witness is objected to by counsel for defendant, generally.)

A. There were several conversations of this kind, and they
234 all occurred in the months of September, October, November, and December, 1878, a very short time previous to his death.

Q. Was any one present at any of these conversations?

A. I think Mr. France heard part of them.

Q. What, if anything, did your father say to you in these conversations or any others in relation to the influence that Kate Conley extended over him?

(Objected to generally by defendant.)

A. He never said in direct words, but from talking with him he gave me to understand that he wanted to leave her, but that for some reason she would not let him. I know myself that she was constantly running after him about the time that he left home

WASHINGTON T. NAILOR.

235 *Deposition of Matthew Trimble, One of the Complainants.* (*Filed Jan.* 13, 1881.)

MATTHEW TRIMBLE, being produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is Matthew Trimble; I reside at No. 614 13th street northwest, in this city; I am the husband of the oldest daughter of Allison Nailor, senior; her name is Rachel Elizabeth.

Q. When were you married to the complainant, Rachel E. Trimble?

A. November 25th, 1869.

Q. Were you acquainted with Allison Nailor, senior, in his lifetime?

A. I was.

Q. When did you first become acquainted with him?

236 A. I think in the fall or winter of 1865. I was introduced to him by my present wife.

Q. How intimately did you know him from that time until his death?

A. I saw but little of him up to the time of my marriage. During the year 1870 I saw him almost daily, and after he left home the last time I only met him occasionally.

Q. About what time did he leave home permanently?

A. I think some time in the winter of 1870, the latter part of the year.

Q. How frequently did you see him about that time?

A. My last experience with him prior to his leaving home was some time in the fall of 1870. Mrs. Nailor asked me one evening if I would be kind enough to go to the stable and see Wash., or

237 one of the boys, and see if they could find Mr. Nailor and bring him home. Failing to find either of the boys, I was directed to a store or restaurant on the corner of 13th-and-a-half and D streets—to Burke's store or saloon. I found Mr. Nailor there, and asked him if he was ready to go home. He had been drinking considerably and hesitated for some time, and he told me that he had another engagement for that evening which he was compelled to fill. He finally consented to go home, and on the way I asked him who the engagement was with. He told me that it was his usual engagement that caused all the trouble in the family, and that he did not believe he would ever be able to get rid of

238 her. Mr. Nailor talked considerably on the way home. His wife met him, and, I think, sat up nearly all night talking to him and urging him to change his manner of living. He remained at home at that time, I think, for nearly three weeks. One day he visited me, about that same time, to go with him to Rockville, and we went in a buggy together. On the way to Rockville, at Tennallytown, he stopped at a little store and I remained outside. When he came out, about an hour afterwards, he was very much intoxicated, and the balance of the ride to Rockville he de-

voted to urging me to accept the agency for the management of his property. He said he would give me absolute control of his property, to do with it as I saw right and proper. We returned
239 to Washington that evening about eight (8) o'clock, and he refused to go to his home, and the next I heard of him he was down the river with Mr. Rowe and other parties, and since that time I have only met him occasionally.

Q. What were his habits from the time you became acquainted with him until he left home?

A. Up to the date of my marriage I did not know him well enough to know his habits. After that time *if* he stayed at home two or three weeks at a time; he was in the habit of getting on sprees, and his wife and his son Wash. would hunt him up and bring him home.

Q. What was his dispositson when under the influence of intoxicating liquor?

240 A. He was unreasonably abusive.

Q. Was it easy or hard to control and influence him when in that condition?

A. With a person with whom he had confidence I believe it would be very easy to influence him to do most anything. I have no personal experience of this, however.

Q. How far from his residence did you live, from the time of your marriage up to the time he left home?

A. The first nine or ten months at his house, and from that time to the present in the adjoining house.

Q. What opportunity, if any, did you have during that time for observing what his treatment was at the hands of his wife and the other members of his family?

A. I was in Mr. Nailor's house daily, and Mrs. Nailor's
241 conduct to Mr. Nailor on all occasions and under all circumstances, whether he was drunk or sober, was such as would be expected from a good, true, and devoted wife. She was much more considerate and gentle in her conduct towards him than I thought could be possible for any woman under like circumstances, and his children also treated him with the utmost respect.

Q. What efforts, if any, were made by his wife or the members of the family to induce him to return and remain at home?

At this point the examination was adjourned until Thursday, May 8th, 1879, at 1½ o'clock.

A. BROWNING,
Examiner.

242 MAY 8, 1879—1.30 o'clock p. m.

Met pursuant to adjournment.

By reason of sickness of A. Browning, Esq., examiner, by consent of parties the examination was continued by Irving Williamson, examiner.

Present: C. C. Cole, Esq., of counsel for complainants, and Messrs. Carrington, Jr., and Rutherford for defendant; whereupon the examination of Mr. TRIMBLE is resumed:

Q. What efforts, if any, were made by his wife or the members of the family to induce him to return and remain at home?

A. I know that in the summer and fall of 1870 Mr. Nailor was on a number of sprees, and on these occasions his wife and other members of the family would go after and bring him home, and
243 all possible means used to induce him to remain at home, and both his wife and children did everything in their power to make it pleasant and agreeable for him.

Q. Do you know the defendant, Catharine Conley?

A. I believe I only saw her once, on the evening of the day Mr. Nailor died.

Q. Where was that?

A. At the house where Mr. Nailor died, on 12th street.

Q. Were you present when Mr. Nailor died?

A. I was not.

Q. How long after his death before you went to the house where he died?

A. It was about seven o'clock in the evening. I think he died between one and two o'clock of the afternoon of the 6th of January.

Q. How long were you present at that house on that
244 occasion?

A. I went there in company with Allison Nailor, Jr.; Mr. Gawler, undertaker, and Deputy Marshal Williams, for the purpose of having the body removed to 612 13th street. We remained, I should think, between ten and fifteen minutes, and then took the body to 612 13th street.

Q. What conversation, if any, did you, or any of the party above mentioned, have with the defendant on that occasion?

A. When we were in the house, in the room with the body, and the marshal had stated his business there, this woman Conley became very much excited, and said she would not allow the body to be removed from the house until she could send for Mr. Car-
245 rington and allow him to examine the papers presented by the marshal. There was considerable conversation and very severe language used by her; the exact language I do not now recollect. The marshal left his paper, and suggested that she could keep that; that Mr. Carrington could read it at his leisure, and proceeded to prepare the body for removal. There appeared to be a number of parties in the room adjoining that in which the body was placed. This woman persisted in denying us the right to leave the house, until finally some man, to me unknown, told her that her safest plan was to allow us to depart peaceably without making any further disturbance. We took the body and left the house.

246 Q. Did you ever have any conversation with Allison Nailor, Sr., in his lifetime, about the defendant or his associations with her?

A. I had no conversation with him on that subject, except as intimated in an answer to a question of yesterday. In that answer I stated that Mr. Nailor gave as his reasons for not going home that evening that he had another engagement, and in the conversation

going to his house he told me this woman's name was Katie. I tried to dissuade him and urged him to give her up, and called his attention to the kind and devoted wife which he had. He said that he had the best wife that God ever gave to any man, but
247 that he was at present under the influence of another woman, from whom he could not escape. I do not remember the exact language used, but that was the impression which it left upon my mind. I used all arguments in my power to extract a promise from him never to return to her; and his wife, after we reached the house, begged him to make a promise to her that he would never return.

Q. When was the conversation stated in your last answer?

A. I forget the month; it was some time near the fall of 1870.

Q. How frequently did you see Mr. Nailor after he left his home and went to live with the defendant?

A. Only a very few times.

Q. Can you state of your own knowledge what his habits were after leaving home?

248 A. I think, without exception, every time I saw him he was intoxicated.

Q. What effect had his drinking and habits of intoxication had upon his mind up to the time he left home in the fall of 1870?

A. He had become very much demented and almost childish in his manner.

Q. How long before his death did you last see him?

A. I have no recollection of when I saw him last.

Q. Did you see enough of him personally after he left home to enable you to form any opinion as to the condition of his mind after that time?

A. From what I saw of him in 1876, 1877, and 1878, I would be unwilling to invest any money or any deed or purchase from him. I do not believe him — to transact business of that
249 character.

Q. What were his business habits after he left home?

A. I have no means of knowing, as I had no business transactions with him.

Q. What business, if any, was he engaged in from the time you first made his acquaintance up until the time of his leaving home?

A. I do not know that he was in any business.

Q. What were his habits during the time last mentioned as to employment? How did he spend his time?

A. From the time I first became acquainted with him up to November, 1869, I saw so little of him that I never knew what he was doing. After that time I knew of no business he was trans-
250 acting, and have no knowledge of any business he was engaged in since that time.

Q. Do you know whether he accumulated any property after you became acquainted with him?

A. I have no knowledge of any property he accumulated since that time.

Q. Did you ever attend to his business for him as his agent or otherwise?

A. In the spring of 1870 Mr. James W. Clarke and myself were in the real estate business, and Mr. Nailor asked us to collect his rents for him. Mr. Clarke did collect his rents for, I think, about one month. I knew nothing of his property; did not even know where it was located. Mr. Clarke and I separated about one month after-
251 wards in business. That was the last of my business transactions with Mr. Nailor.

Cross-examined by Mr. RUTHERFORD:

Q. You say that on one occasion Mr. Nailor solicited you to accept the agency of his business. Was that the only occasion he ever solicited you to act for him?

A. I think so.

Q. Why did you decline?

A. In the first place I was very strongly averse to having anything to do with the collection of his rents for fear it might engender bad feeling among other members of the family, and in the next place, on the occasion referred to, I did not consider him in a proper condition to make any such proposition.

Q. You have stated that you did not know of Mr. Nailor
252 having accumulated any property after 1870. The fact is, is it not, that you know nothing whatever about it, whether he did or did not?

A. The fact is that if he had accumulated any property I would be very likely to know.

Q. Why? Did he talk with you on the subject of his business?

A. He did not talk with me on his business, but as my wife was one of his children we would be naturally interested in the accumulation of property by him.

Q. As he left home in the fall of 1870, was he, to your knowledge, in the habit of communicating his business affairs, as to property, to your wife?

A. When he was at home he was in the habit of talking very freely about his property to the different members of the family; this was prior to the time he left home in 1870. I think my wife never saw him after he left home in 1870.

M. TRIMBLE.

253 *Deposition of John H. Clark for Complainants.* (*Filed Jan. 13, 1881.*)

JOHN H. CLARK, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

Q. Where do you reside?

A. In Washington.

Q. Give the locality.

A. New York avenue, between 17th and 18th streets.

Q. How long have you resided in Washington?
A. Seventeen years.
Q. Did you know Allison Nailor, Sr., in his lifetime?
A. Yes, sir; since 1862 or 1863.
Q. Did you know him from that time down to the time of his death?
254 A. Yes, until within a few days of his death.
Q. About how intimately did you know him during that time?
A. I knew him, seeing and talking with him every few days.
Q. What were his habits as to the use of intoxicating drink during the time you knew him?
A. He drank a great deal, most of his time.
Q. Did you ever see him when intoxicated?
A. Often.
Q. About how often?
A. For the first eight or ten years he was under the influence of liquor the most of his time.
Q. How was it during the last six or seven years of his life?
A. He sort of became stupid like: he once or twice told
255 me he couldn't drink like he used to; it had got the best of him.
Q. Did you see him intoxicated during the last six or seven years of his life?
A. Yes, sir.
Q. About how frequently during those years?
A. Well, I used to meet him once a month or every five weeks or so. Whenever I did see him, until about the last two years, he was under the influence of liquor. He passed by my house whenever he went to his farm, so I had a chance to see him.
Q. About how frequently did you see him during the last two years of his life?
A. Every two weeks, or oftener.
Q. How were his habits, in relation to intoxication, during those two years; about how frequently did you see him intoxicated during those two years?
256 A. I should judge about seven to ten times.
Q. When you saw him intoxicated, to what extent was he under the influence of drink?
A. Sometimes he could go alone, sometimes he had to be helped.
Q. Did you converse with him any during the last two or three years of his life?
A. Yes, sir.
Q. How frequently?
A. I always kept out of his way until the last seven or eight months. I always kept out of his way. The last seven or eight months we talked a good deal together.
Q. Do you know the defendant, Catharine Conley?
A. I know her when I see her. She lived right opposite me for a year or so.
Q. When was that?

257 A. Along in 1870 or 1871, in that neighborhood.
Q. Was Mr. Nailor living with her at that time?
A. Yes, sir.
Q. Did you ever see them together?
A. Yes, sir.
Q. About how frequently?
A. I should judge every day or two for a year.
Q. Did you ever have any conversation with Mr. Nailor in relation to this woman?
A. No, sir.
Q. What was the condition of Mr. Nailor's health from the time you became acquainted with him down to his death?
A. I think his health and mind have been failing for the last eight or nine years. He lived in a filthy, unhealthy place
258 part of that time. He kept a little rum shop and sold to negroes, and was fined by the police once, I know of—I think several times—and finally had to leave there.
Q. Who kept the shop you speak of?
A. A negro man owned the building; Mrs. Conley waited on the customers.
Q. What was Mr. Nailor's business habits from the time you knew him until his death—what business, if any, did he transact or carry on?
A. I never knew him to do anything.
Q. Did you know him well in the year 1872, and in the spring of the year 1878?
A. I used to see him every few days; sometimes I talked with him and sometimes I did not.
Q. State what the condition of his mind and body was at and about these dates.
259 A. He was growing feeble; every little while I would notice it; I used to talk with him about it. His mind was flighty like; he would commence talking on a subject and in a few minutes forget what he was talking about and go on to something else.
Q. What was the general character and tenor of his conversations?
A. He would frequently speak of his business before the war, how it was done, how much money he made, and generally wind up that he was getting too old for any business, that his health was failing fast and he was getting weak.
Q. State whether, in your opinion, in March, 1878, Mr.
260 Nailor's mind and health was in such condition as to render him competent to comprehend large and important business transactions, and competent to make, understandingly, a disposition of his property to the extent, say, of from $20,000 to $25,000 in value?
A. I don't believe, in my mind, that Mr. Nailor has been competent to do any business to the amount of $200 for the last four or five years.

Q. State whether, in your opinion, Mr. Nailor's mind and health were in such condition as to render him competent for the transaction of such business, say in the fall of 1872?

A. I do not think he was competent since 1871 or 1872 to do any business; his mind was wandering and he was very forgetful.

261 Cross-examined by Mr. CARRINGTON, Jr.:

Q. What is your business?

A. Tailoring business, at 921 Pennsylvania avenue.

Q. How long have you resided on New York avenue, between 17th and 18th streets?

A. Since 1864.

Q. Was Mr. Nailor in the habit of using liquor when you first knew him; and, if so, to what extent?

A. He used to get very drunk; he would get down and have to be carried up stairs. This was pretty often; you would hardly find him sober when I first knew him, unless you caught him early in the morning.

Q. Did his habits of intoxication increase or diminish during the last years of his life?

A. During the last two years diminished a great deal.

262 Q. Was he more addicted to the use of liquor in 1864 and 1865 than from 1869 to 1875?

A. More in 1864 and 1865. I had more chance of seeing him then—he lived in the rear of my stable.

Q. Did the course of his life, I mean manner of living, change after you first became acquainted with him?

A. Yes, sir.

Q. How; to what extent?

A. He lived home with his family when I first knew him; later in his life he lived with the Conley woman.

Q. I mean morally did he grow better or worse, irrespective of his living with this woman?

263 A. He grew morally worse. He left a good family and lived in a hole. He was never very particular in his language.

Q. Now, how did he grow worse, leaving Catharine Conley out of the question?

A. I don't know that he used any worse language. He lived in worse places and kept bad company in bad neighborhoods.

Q. Did not Mr. Nailor have the reputation prior to 1869 of being a drinking man and of having a fondness for loose women?

(Objected to so far as it refers to his reputation as to loose women.)

A. I know he was a drinking man, but never knew him to go after any woman until this one. I knew nothing of this woman until he moved up to my neighborhood in 1864.

264 Q. Your knowledge, then, of the last clause of my question is only derived from the fact that Mr. Nailor and Catharine Conley lived opposite you?

A. Yes, sir.

Q. Has Mr. Nailor carried on business since the war; and, if so, what business?

A. I never knew him to do any business at all.

Q. Can you repeat any conversations between Mr. Nailor and yourself within the last two years of his life?

A. The last time—I think early last fall, about two or three months before his death—he came into Mr. Wash. Nailor's stable, with a cane in his hand; he was then very feeble. I got a chair for him and he sat down there; he said he was sick, very
265 weak, and could hardly get up and down stairs, and ought not to be out then. He got up in the course of ten minutes, called some one to help him in a wagon, being too weak to walk home.

Q. At that time or any other did he talk with you about the suit or difficulty between himself and his son Allison; and, if so, what did he say?

("What he said" is objected to as evidence by Mr. Cole.)

A. Yes, sir; he was finding fault with Ally; said he hadn't used him well; said he got him to sign papers he never intended to sign and never did sign. We were then standing in the street near 13th street. Mrs. Nailor, Sr., was in Allison's or Washington
266 Nailor's stables, and I was requested to keep him there until she went away. He made a start to go towards the stable, and I told him his wife was there, he had better wait a moment; he said, "Wash's mother?" I said, "Yes." He said, "God bless her old soul." She came out and went away; he then went in the stable; he was very nervous when he heard she was there, trembled a good deal.

Q. Did he ever speak of his business or his relations with his son Washington?

A. I have heard him frequently blow Ally up and then Wash., first one and then the other, in pretty strong terms. I would generally get up and go away.

Q. Do you recollect upon what subject he was finding fault with them?

267 A. Generally about his property; there was something wrong about it.

Q. Can you recollect any other conversation during that period? And, if so, tell it.

A. No, sir; I do not remember any other.

Q. Can you repeat any conversation in which he seemed to grow flighty? And, if so, repeat it.

A. No, sir; I remember none just now.

Q. Did you have any business transactions with him?

A. Never.

Q. Why do you say that he was competent to attend to business to an amount less than $200, and not where the amount was in excess of that sum?

(Question withdrawn.)

Q. Will you relate any act of forgetfulness on the part of Mr. Nailor?

268 A. Only in general conversation, as I said before. He would get on one subject and then start on another.

Q. State some conversation in which he did this?

A. I don't know of any other conversation that I can state now, except the last two that I spoke of.

Q. In what was he forgetful in those two last conversations?

A. He would break off from one to the other; it was necessary to jog his memory as to what he was talking about.

Q. You have stated those conversations to the best of your recollection already, have you not?

A. Yes, sir.

JOHN H. CLARK.

Subscribed and sworn to before me this 8th day of May, A. D. 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

(Adjourned until Monday next at 1 o'clock p. m.)

269 Further adjourned until Wednesday, May 14th, at 3 o'clock p. m.

Deposition of Charles F. M. Bruce for Complainants. (*Filed Jan.* 13, 1881.)

WEDNESDAY, *May* 14*th*, 1879—3 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel on both sides and the witness, CHARLES F. M. BRUCE; whereupon the latter, being produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

I reside at the corner of 16th and L street- in this city.

Q. Were you acquainted with Allison Nailor, senior, in his lifetime?

A. Yes, sir.

Q. How long did you know him?

270 A. Thirty-five or forty years ago.

Q. Did you know him during all that time?

A. Yes, sir.

Q. About how intimately did you know him?

A. I lived in the house with him ten or twelve years.

Q. About when and where was that?

A. On 13th street, between F and G streets.

Q. About how long ago was it?

A. It was before the recent war.

Q. How intimately did you know him before you left his house?

A. I used to see him every day until he went to his farm to live.

Q. About when did he go to his farm to live?

A. I could not tell the date.

Q. How frequently did you see him while he was living on his farm?

271 A. I have been out there to help him in harvest time, and staid a week at a time.

Q. About how frequently did you see him after he removed from his farm back to the city?

A. Every day or two; sometimes every week, and sometimes it would be a month.

Q. Do you know Catharine Conley?

A. Yes, sir.

Q. How long have you known her?

A. I could [not] tell the time, but for some time; the first time I saw her was at Jim. Marr's, corner 13½ and E street N. W.

Q. How did you happen to see her there?

A. I went there to get Mr. Nailor home for his wife.

Q. What sort of place was it?

272 A. A drinking place, and rooms rented out; I went back in one of the rooms and persuaded him to come out.

Q. What was Catherine Conley doing there when you saw her?

A. Nothing; she was standing in the room, and Mr. Nailor was in bed.

Q. Was she in the same room with Mr. Nailor?

A. Yes, sir.

Q. Was anybody else in the same room?

A. I did not see any person else.

Q. What was Mr. Nailor's condition when you found him?

A. He had been drinking.

Q. Did he go home with you?

A. Yes, sir.

Q. What did Catharine Conley say at that time, if anything?

A. She said nothing at all.

Q. Were you living at Mr. Nailor's house at this time?

A. No, sir; his wife used to come after me to go after him.

273 Q. About when was this?

A. Just after he moved in from the farm.

Q. Did you know when Mr. Nailor left home and went to live with Catharine Conley?

A. Yes, sir.

Q. About how long was this occurrence before he left home?

A. I could not tell. I used to go after him often before he left home, and often Mrs. Nailor came to me from the farm to go after him and take him home. I have often gone the coldest nights in winter with him to the farm.

Q. Did you ever see him with Catharine Conley on any other occasion than the one mentioned before he left home permanently and went to live with her?

A. Yes, sir.

274 Q. About how many times did you see him with her before he left home permanently and went to live with her?

A. I could not tell you that, but a good many times.
Q. What was his condition on such occasions?
A. He always seemed to me to be on a spree all the time.
Q. About how often did you see him after he left home and went to live with Kate Conley?
A. I saw him very often, but cannot tell how often.
Q. State how frequently you saw him the last year that he lived?
A. Sometimes two or three times a day and sometimes once a week, as I happened to be passing by.
Q. What were Mr. Nailor's habits as to the use of intoxicating liquor during the time that you knew him?
A. Sometimes when I met him he would be sober, and
275 sometimes he would be drunk.
Q. When you first knew him about how often would he be drunk?
A. He was a temperate man.
Q. About how long after you first became acquainted with him did he commence to drink to intoxication?
A. I could not sell how long, but a good while.
Q. About how frequently did he drink to intoxication, say the last two or three years that he remained home with his family?
A. I could not tell how often, but he got on sprees, and his wife came after me to get him to go home.
Q. About how often did you see him intoxicated after he left home and lived with Catharine Conley?
A. Every time I saw him he was drunk.
276 Q. Were you ever at the house where he and Catharine Conley lived while he was living with her?
A. Yes, sir; dozens of times.
Q. Did you see Catharine Conley on those occasions?
A. Yes, sir; she was there.
Q. Did you ever talk with Mr. Nailor about his living with her, or did he ever talk to you on the subject?
A. Mr. Nailor talked to me about it last fall.
Q. What did he say?

(Objected to generally by def't, and also to all conversations that the witness has testified to with Mr. Nailor, the deceased.)

A. He came to see me, very feeble, and I helped him across the street, and I asked him why he did not go home, and he said
277 he intended to stop the life he was living and go to his home; he said that he did not believe those children were his children, and that he was tired of that way of living.
Q. When was this?
A. Last fall.
Q. Did you ever have any other conversations with him on the same subject?
A. No, sir.
Q. How often did you see him and talk with him during the last two or three years of his life on any subject?
A. I could not say how often, but pretty often.

Q. What was the condition of Mr. Nailor's health after he left home and went to live with Catharine Conley?

A. He drank so much that it kept him feeble always.

Q. What was the condition of Mr. Nailor's mind after he
278 went to live with Catharine Conley?

A. I don't think he had any mind.

Q. In your opinion, was Mr. Nailor's mind in such condition, say in March, 1878, that he could understandingly transact important business, say like making deeds for real estate, to the extent of property valued at from $20,000 to $30,000?

A. I don't believe he was, because he was always drinking.

Q. When he was intoxicated what was his disposition; was he hard or easy to influence or control?

A. Pretty rough kind of a man to deal with.

Q. From what you saw of his association with Catharine Conley, what influence, if any, did she seem to have with him?

A. When I went there she would be in a little whiskey
279 shop in front, and he would be in the b ck room lying on the sofa.

Q. What business, if any, did Mr. Nailor attend to after he went to live with Catharine Conley?

A. He did not seem to attend to any; he was laying up in the house all the time.

Q. How long was it before he went to live with her that he attended to any business?

A. Until and after he came in from the farm.

Q. Did you ever know a place in the city called the "Iron Door" or the "Iron Clad?"

A. Yes, sir; the "Iron Door."

Q What sort of place was it?

A. A dissipated house.

Q. Where was it?

A. On the west side of 12th St., between D and C streets.

Q. State whether you ever saw Mr. Nailor and Catharine Conley there.

280 A. I have sought Mr. Nailor out of there. I went upstairs after him, and they told me it was all night and I took him home. I saw a woman in there with him, but could tell who it was.

Q. When was this?

A. I could not tell, but before he left home.

Cross-examination by Mr. CARRINGTON:

Q. What is your business?

A. A hackman, and have been in that business since I was thirteen years old. I drive for Mr. Boyd. I drive in daytime.

Q. What was Mr. Nailor's business when you first went to live with him?

A. He was in the omnibus line, kept a livery stable, and a coach shop.

Q. Can you read and write?

A. No, sir.

281 Q. What were the relations between Mr. and Mrs. Nailor during the time you lived in the house?

A. They were a happy couple then. I heard no complaint about them.

Q. When did you notice the first unhappiness between them?

A. I could not tell; a good many years ago, when he began to drink. I carried him home a many a time before the war. I used to go after him all the time until he left home, when I gave him up. When I took him out of the "Iron Door" house he then lived at the farm, and that is the only time I ever took him out of that house.

Q. After he left home you say you saw him frequently. Did you talk to him every time you saw him?

282 A. Pretty much every time. We talked about things generally. The conversation I had with Mr. Nailor at the hack-stand made an impression on my mind, and I don't remember that any other did. I have had conversations with him on business, and many a time advised him to stop drinking and go home.

(Adjourned until Friday, May 16th, at 3 o'clock p. m.)

A. BROWNING,
Examiner.

FRIDAY, *May 16th*, 1879—3 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel on both sides, and the witness, CHARLES F. M. BRUCE; whereupon the cross-examination of the latter was resumed as follows:

By Mr. CARRINGTON:

283 Q. When did Mr. Nailor stop attending to business generally?

A. I could — tell the time, but when he moved to the farm he stopped attending to business. He never had any stable after he came in from the farm. I mean by business that he did not keep a livery stable any longer. I could not tell the time I saw Kate Conley at the corner of 13½ and E street-, but it was after the war. Mr. Nailor had then moved in from the farm.

Q. What are your duties as a hackman; do you remain at the stable or are you on a hack-stand?

A. I am on the street all the time. I have been on a hack-stand a long time, for at least twenty years. I go on the stand accord-

284 ing to my own choice, generally get out about 9 o'clock in the morning, and if I don't get a job stay there all day; for the last five years I have staid at Williards, and during all that time have taken my meals at home.

Q. The last year before Mr. Nailor's death, how often did you see him and where did you see him?

A. I could not tell how often, but very often; sometimes I saw him at the hack-stand, sometimes at Williards, and sometimes at Kate Conley's.

Q. When was the last time you saw him?

A. On the street about two weeks before he died. I could not tell exactly when he began to drink to excess. He was drinking while he lived at the farm, but I don't know whether he drank
285 before that or not. He was a temperate man for a long time after I went to live — him. When I first knew him he did not drink anything, but attended to his business all the time.

Q. When was it you had the conversation with Mr. Nailor in which he made certain statements to you?

A. It was some time last fall; can't say whether it was September, October, or November. I know it was in the fall, because it was getting cold weather.

Q. What day of the week was it?

A. I don't know.

Q. The day of the month, if you know?

A. I don't know; nor the hour of the day.

Q. When the conversation occurred who was present?

A. Myself and old man Mullen. Mr. Nailor came up 14th street to the hack-stand.

286 Q. Did this conversation occur while he was standing there talking to you?

A. Yes, sir; to both of us.

Q. How far did you walk with him?

A. Across the street. He was talking to me about going home, and said he believed he would. He said he did not believe those were his children, and I said I did not think so either.

Q. You said this conversation occurred while you were at the corner with Mullen, and now you say it occurred when you were helping him across the street; now which is it?

A. The conversation took place when me and Mr. Mullen were standing at the 14th street corner.

Q. What did he say to you in going across the street?

287 A. He was not saying anything; I was helping him across.

Q. Did he go home?

A. He went into the barber shop.

Q. What children did he speak of, or what names did he mention?

A. He was speaking of Miss Kate's children; he only said those children, but mentioned no names.

Q. How do you know he meant her children unless he mentioned them?

A. He called Kate's name.

Q. How did he mention her name, and in what connection?

A. He said that he did not believe that those children Kate has was his.

Q. In your examination-in-chief have you repeated the conversation precisely as it occurred?

A. As near as possible as I know. There may be some
288 errors in it.

Q. Does it not contain a good many errors?

A. No, sir; I think just as I said is so. I am confident it is. I remember it well.

Q. You are just as positive of the time this conversation occurred that you have stated as of anything else you have spoken of?

A. I am confident of what he said, but not of the time.

Q. You say that conversation occurred in the fall?

A. Yes, sir.

Q. You are just as positive that it occurred in the fall of last year as you are of anything else you have said?

A. Yes, sir.

Q. What year was it that you took Mr. Nailor from the house called the "Iron Door?"

289 A. I could not tell, but before the war, I think. After thinking, I am sure it was not before, but after the war.

Q. How long after the war was it?

A. I could not tell, sir.

Q. Was it two years or one year?

A. I could not say, sir.

Q. How long did you drive for Mr. Washington Nailor?

A. About five or six months, the last time I drove for him.

Q. Who did you tell that you had this conversation with old Mr. Nailor?

A. I don't remember of telling anybody.

Q. Have you had any conversation with Mr. Washington Nailor about the case?

A. Only he came after me to come down here.

Q. Did you tell him then what you knew about it?

290 A. I never told him anything about it, because I did not want to come.

Q. Were you a witness in the divorce suit between Mr. Nailor and his wife?

A. Yes, sir.

Q. Do you remember what you testified to there?

A. I do not remember now. I kept no memorandum of it.

Redirect by Mr. COLE:

Q. How many times did you see Mr. Nailor and the Conley woman at Marr's corner, at 13½ and E streets?

(Objected to by def't generally.)

A. Several times, but I could not tell how many times.

Q. How many times did you ever take Nailor away from that place?

A. Once by myself; but I have been there with Mr. Washington Nailor when he has taken him away several times.

291 Q. How did Mr. Nailor and his wife live up to the time that he went away from home; how did they treat each other?

A. First rate, sir; they were always agreeable.

Recross by Mr. CARRINGTON:

Q. Can you fix the dates when you saw him at Marr's corner?
A. No, sir.
Q. Was it before or after the war?
A. After the war, but I cannot tell how long after. It was after Mr. Nailor came in from the farm, but I cannot say how long after.
Q. Mr. and Mrs. Nailor lived happily together when she would come to this city in the coldest weather of winter and find him drunk and take him home?
A. When I lived in the house with them they lived hap-
292 pily together. I don't know how they lived at the farm; I suppose they always lived happy; they did as long as I knew them.
Q. Did you ever take Mr. Nailor from any house of prostitution during the time that he lived at the farm?
A. I have taken [him] from the "Iron Door;" that is the only one I took him from while he was at the farm.

his
CHARLES F. M. x BRUCE.
mark.

Witness:
A. BROWNING.

Subscribed and sworn to before me this 16th of May, 1879.
A. BROWNING,
Examiner.

Adjourned until Monday, May 19th, 1879, at 3 o'clock p. m.
A. BROWNING,
Examiner.

293 *Deposition of Jacob Poss for Complainant.* (*Filed Jan.* 13, 1881.)

MONDAY, *May 19th*, 1879—3 o'clock p. m.

Met pursuant to adjournment.
Present: Counsel on both sides and the witness, JACOB ROSS, who, being produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is Jacob Poss; I reside at Rockville, Montgomery county, Maryland; I am acquainted with the parties to this suit.
Q. How long have you resided at Rockville?
A. Five years this spring.
Q. Where did you reside before you resided there?
A. I lived in Montgomery county, Maryland, on a farm of Mr. Nailor's, for nearly five years.
294 Q. Where did you reside before you were on the farm?
A. I was at Brightwood, on the 7th-street road, about three years.

Q. Did you know Allison Nailor, senior, in his lifetime, and his wife, and how long?

A. Yes, sir; in the neighborhood of twenty years, I think.

Q. About how frequently did you see him during that time?

A. Sometimes every day, sometimes two or three times a day, and when I lived in the country I would not see him sometimes for a week.

Q. How often did you see him the last five or six years of his life?

A. I could not tell; sometimes I would see him every day, and sometimes it might be a month before I would see him, but that did not happen often.

Q. What were his habits in relation to the use of intoxi-
295 cating drinks during the time that you knew him?

A. He was about nine-tenths of his time drunk.

Q. How were his habits in this particular the last four or five years of his life as compared with what they were when you first knew him?

A. He drank more. When I first knew him he was more capable of attending to business than he was in latter years.

Q. What were his business habits when you first knew him?

A. He was then quite a shrewd business man.

Q. What business was he engaged in when you first knew him?

A. Farming and dealing in stock to a certain extent, and
296 used to deal in property and most anything that there was money in.

Q. What business was he engaged in, if any, the last few years of his life?

A. I can't say that he was engaged in any business. He let his farm all go to rack; the fencing all fell down, and his buildings all went to rack on his farm, and his stock was neglected and died off. The spring I took the farm he had plenty of feed and a great deal of stock there, and still he would let his stock die for the want of attention and care, and his farming implements, machinery, and everything just laid out and rotted.

Q. About how long before his death did he cease to do or to attend to business?

A. As far as I can recollect, he commenced to neglect his
297 business nearly ten years ago, and kept getting worse.

Q. Did you ever see him in the presence of Kate Conley?

A. Yes, sir; often.

Q. Where?

A. Mostly at the house they lived in, up in the first ward, where she kept a little shop.

Q. How did you happen to go to the house where they were?

A. I sometimes took vegetables there when I was farming; he used to get me to leave stuff there.

Q. Were you living on Mr. Nailor's farm at the time?

A. Yes, sir.

Q. Did you ever have any conversation with him on any of those occasions about taking produce from his farm to his wife?

(Objected to by def't.)

A. Yes, sir.

Q. What did he say about it?

(Same objection.)

298 A. He has told me not only once, but frequently, not to take any there, nor to give her any money.

Q. Were these conversations or any of them in the presence of Kate Conley?

A. I think once or twice they were. On one occasion I know I gave Mrs. Nailor $10.00 or $20.00 to go to market with, and Mr. Nailor swore that he never would make it all right with me, and he never did. Before Mr. Nailor went to live with Kate Conley I used to furnish Mrs. Nailor with produce from the farm, and I continued to furnish her with produce even after he forbid me to do so.

Q. What was Mr. Nailor's condition, generally, when you
299 saw him at the house where he was living with Kate Conley?

A. He was generally intoxicated, and sometimes very drunk; he generally was under the influence of liquor, and then said he was sick.

Q. What was the condition of Mr. Nailor's health when you first knew him?

A. He was a strong, hearty, business man.

Q. How was it towards the last of his life, say the last five or six years of his life?

A. He was broken down very much from drinking; if he was not under the influence of whiskey all the time, he was generally sick from its influence.

Q. What effect, if any, did his drinking and the state of his health appear to have on his mind, toward the last of his life, say the last six or seven years?

300 A. He would be stupefied a great deal, and was always sick, and did not seem to have the same use of himself as he did before. I think liquor was the cause of it.

Q. How often did you converse with him during the last six or seven years of his life?

A. Sometimes I would see him and talk to him every day for some days, and sometimes I might not see him for a month; but I saw him pretty regular, and every time I would be in town.

Q. How often did you converse with him the last year of his life?

A. Not more than two or three times, because he and I had a little falling out; he got to be very cross and insulting towards
301 the last, and I did not care to go where he was.

Q. When was the last time you talked to him?

A. I suppose some three or four months before he died; he met me on the street and cursed me; he was drinking then, and that is the last time I talked with him.

Q. When was the last time before that, that you talked to him?

A. I could not tell the time; but I used to see him quite frequently at times.

Q. Do you remember of seeing him in March or April, 1878?
A. I think I saw him in Rockville about that time.
Q. Can you fix the date that you saw him at Rockville?
A. I could not, sir; but he came there for the purpose of conveying his property to some one; I heard him say that he was
302 not going to leave his property to some of his children—I forget which—to dispose of, but that he was going to do away with it.
Q. Was there anybody with him on that occasion?
A. Miss Kate Conley was with him, and also a little boy.
Q. What was Mr. Nailor's condition at that time?
A. I did not get very close to him, but he looked to be either very weak or else drunk; he did not walk as straight as he generally did.
Q. In your opinion, was the condition of Mr. Nailor's health and mind such as to render him competent to understandingly make a disposition of a large quantity of real estate, valued from $20,000 to $30,000, say in the latter part of March, 1878?
A. I do not think he was.
303 Q. State whether or not you consider him competent to have conveyed, understandingly, real estate, say in November, 1872?
A. Yes, sir; he was perfectly competent.
Q. Did you see him in the presence of his wife much during your acquaintance with them?
A. The early part of my acquaintance; yes, sir. I have frequently staid at their house all night.

The WITNESS: I desire to correct an answer I made to a former question when I said Mr. Nailor was competent to have conveyed, understandingly, real estate in November, 1872. I understood it to be 1862 instead of 1872. During 1862 he was perfectly competent to transact and did transact business.

304 Q. How was it in 1872—about his competency—the date referred to in the question that you have just referred to?
A. At that time—I think it was shortly after he went to live with Kate Conley, and he was drinking a good deal and very feeble.
Q. What was the general conduct of Mrs. Nailor towards her husband when you saw them together?
A. She was as clever as a woman could be to her husband. I have been at the house and have seen him come in there beastly drunk, and she would always take the very best of care of him.
Q. Was she cross to him on those occasions?
A. No, sir. I have known her to come to my house at mid-
305 night with a carriage and ask me to go and look Mr. Nailor up, and I have gone on many occasions and found him at houses of ill fame, sometimes beastly drunk and in bed with women, and have taken him home, and sometimes have taken him to my own home, when he refused to go to his home, and I have taken him out in the country and kept him there, on one occasion for over a week, to try and get him sober.

JACOB POSS.

Adjourned until Tuesday, May 20th, 1879, at 3 o'clock p. m.

A. BROWNING,
Examiner.

306 *Deposition of Thomas E. France, Jr., for Complainant.* (*Filed Jan.* 13, 1881.)

TUESDAY, 20TH, 1879—3 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel for both sides and the witness, THOMAS E. FRANCE, who, being produced on behalf of complainants and sworn, did depose and say, as follows:

By Mr. COLE:

My name is Thomas E. France, Jr.; I reside at No. 923 H street, in this city.

Q. What is your occupation?

A. I am with Mr. Washington Nailor at his livery stable.

Q. How long have you been there?

A. About four years this last time?

Q. Did you know Allison Nailor, senior, in his lifetime?

A. Yes, sir.

Q. About when did you first become acquainted with him?

307 A. I have known him ever since I can remember—from twenty to twenty-five years.

Q. About how intimately did you know him during that time?

A. I would see him nearly every day.

Q. Did this continue down to the time of his death?

A. It did.

Q. Did you ever live or board in his family?

A. No, sir.

Q. Were you ever about his house much?

A. Yes, sir.

Q. When you first became acquainted with Mr. Nailor what were his habits in relation to the use of intoxicating drinks?

A. Mr. Nailor always drank some, but towards the latter part of his life he grew worse and drank more.

308 Q. When you first knew him did he drink to intoxication?

A. I have seen him tight sometimes.

Q. What were his habits in that particular the latter part of his life, say the last seven or eight years?

A. He would get drunk and go to any place; the lowest place was the best place for him.

Q. About how frequently was he intoxicated or under the influence of intoxicating liquor, say the last seven or eight years of his life?

A. He was nearly all the time under the influence of liquor.

Q. State whether he drank to a greater degree of intoxication at some time than at others.

A. Sometimes he was more under the influence of liquor than at some others.

309 Q. State to what degree or condition of intoxication he would sometimes drink?

A. Until he was dead drunk.

Q. About how often did he drink to such extent, say during the last four years of his life?

A. As often as he could drink the liquor.

Q. What were his habits about drinking after he went to live with Kate Conley as compared with with what they were previous to that time?

A. His habits became more loose; he had less respect for himself than before, and drank more and got drunk more frequently.

Q. What business was Mr. Nailor engaged in after he went to live with Kate Conley?

A. Nothing.

Q. How long before he went to live with her was it that he was engaged in business?

A. I don't remember.

310 Q. What was the conditian of his health towards the last of his life, say the last four years?

A. His health was so poor that I think it impaired his mind.

Q. What were his habits of life after he went to live with Kate Conley; that is, how did he spend his time generally?

A. He spent his time generally in getting drunk and lying around in the lowest brothels he could find.

Q. About how frequently did you converse with Mr. Nailor, say during the last eight years of his life?

A. Every day or so.

Q. And did your conversation with him continue with that frequency down to about the time of his death?

A. Yes, sir; I had a talk with him nearly every time I
311 would see him. He and I were always very friendly.

Q. State whether he was inclined to talk much or keep quiet generally.

A. He was very communicative with me.

Q. What did he generally talk about in his conversations with you?

A. About everything—his family trouble, his business, and everything else that a man could talk about.

Q. Do you remember whether he seemed to have any one subject about which he talked more than any other?

A. No; I don't remember that he did.

Q. From your knowledge of Mr. Nailor's condition, state whether, in your opinion, he was competent, say in the latter part of March, 1878, to make deeds for or otherwise dispose of, understand-
312 ingly, real estate, say to the value of from $20,000 to $30,000?

A. I should say most decidedly that he was not.

Q. In your opinion, how long was it prior to his death that he was incompetent to transact business?

A. I should think from six to seven years before he died.

Q. State whether, in your opinion, he was competent to transact business of any considerable magnitude during any of that time?

A. I don't think he was.
Q. Did you ever see him in the presence of Kate Conley?
A. Only when he was dying, in the house; but I have seen them frequently together in the street.
Q. Who was present when he was dying?

A. Kate Conley, an old woman, whose name I don't know,
313 another, an Irish woman, and myself.

Q. Were you there when he died?
A. I was not.
Q. Did you go to the house after he died?
A. I did, once.
Q. Did you go of your own motion or at the request of somebody?
A. Of my own motion.
Q. Did you see Kate Conley on that occasion?
A. I did.
Q. Did you have any conversation with her?
A. I did.
Q. What was it?
A. I tried to get her to let the body go home to the house. She said that she would not let the body go, and that she had had him baptized in the Catholic church.

Q. When you saw Mr. Nailor with Kate Conley in the
314 street, as above stated, were they generally riding or walking?

A. Riding.
Q. How frequently have you so seen them together?
A. Very frequently in warm weather; not so often in cold weather.
Q. Did they ever have children with them on any of those occasions?
A. I saw a baby and a little boy with them.
Q. Did you ever hear Mr. Nailor speak or talk of Kate Conley?
A. I have.
Q. When, and where?
A. At the stable, and just before he was taken sick the last time.
Q. What did he say?

(Objected to by defendant.)

A. He gave me to understand that if Mrs. Nailor would
315 ask him to come home he would do so; that he was getting old, and had become tired of the life he was leading.

Q. Is that about the language that he used?
A. Yes, sir; or words to that effect.
Q. Who else was present on that occasion, if any one?
A. No one.
Q. Did you ever have any other conversation with him in relation to Kate Conley, or hear him have a conversation with any one else?
A. I have had a great many conversations with Mr. Nailor, in which he led me to believe that he was not happy in the life he was leading, but never a conversation in which he so fully explained

himself as in the last talk I had with him. I also heard a
316 conversation between Mr. Nailor and Washington Nailor. Wash. accused him of lying up with this woman, Kate Conley; he denied it, and said that he did not know any more about Kate Conley than he (Wash.) did.

Q. When and where was that last conversation?

A. In front of the stables, and, I should think, about two or three months before he died.

Q. Do you know how Mrs. Nailor treated Mr. Nailor while he remained at home?

A. Always well. I never heard to the contrary.

Q. Did you ever make known to her the conversation that you said you had with Mr. Nailor, in which he seemed to indicate that he would go home if his wife would ask him?

317 A. I think I told Wash., but don't think I said anything to her.

Q. Do you know of any efforts on the part of Mrs. Nailor and the children to induce him to go home?

A. There was every effort made that it was possible for them to make to induce him to go home.

Q. Do you know how long he was confined to the house during his last sickness?

A. I don't think over a week. It may have been a little longer.

Cross-examination by Mr. RUTHERFORD:

Q. What is your business?

A. I buy and sell horses, carriages, harness, and anything I can make money on.

Q. You state that for four years past you have been with Mr. Nailor; what was your occupation before that time?

318 A. I was with T. A. Stevens, clothing-house and furnishnishing goods, on Pennsylvania avenue.

Q. How long were you with him?

A. About two years, I think.

Q. What was your occupation previous to that?

A. I was with Mr. H. Stevens & Co., furnishing goods, hats, caps, &c.

Q. Are you related or connected with Mr. Washington Naylor?

A. No, sir; I am not.

Q. Do you know in what business Mr. Allison Nailor, senior, accumulated his money and property?

A. Buying and selling horses, running omnibus lines, building stages, buggies, carriages, and wagons, in real estate, and buying and selling negroes.

Q. How often did you see Mr. Nailor during the last two years of his life?

A. Nearly every day.

319 Q. Was this on the street or was it where he was then residing that you saw him nearly every day?

A. On the street, at the stable, at Burk's corner. He only went to three or four places around that neighborhood.

Q. Are you under a salary with Mr. Washington Nailor?

A. Mr. Nailor don't pay me a dollar.

Q. Are you interested in Mr. Washington Nailor's lease of his stable?

A. No, sir; I buy and sell horses at Mr. Nailor's stable, and when he is away I look after his business, and when I am away he takes care of mine.

Q. Did Mr. Nailor drink as much during the last two years of his life as he had previous to that time?

A. He did; he drank more.

320 Q. Did he drink more the last year of his life than the preceding year?

A. I think he grew gradually worse, and drank more and more.

Q. Did he drink more during the last month of his life than he did the previous month?

A. I do not remember that; the periods are too close together; I think he was gradually growing worse and drinking more.

THOMAS E. FRANCE, JR.

Subscribed and sworn to before me this 20th day of May, 1879.

A. BROWNING,
Examiner.

Adjourned until Wednesday, May 21st, at 3 o'clock p. m.

A. BROWNING,
Examiner.

321 *Deposition of Delaware Hudnell for Complainants.* (*Filed Jan. 13, 1881.*)

MAY 21, 1879.

Met pursuant to adjournment. By reason of the necessary absence of Examiner Browning, the taking of testimony, by consent of counsel, is continued before the undersigned.

Present: Mr. C. C. Cole, for complainants, and Messrs. Carrington & Rutherford, for defendants; whereupon DELAWARE HUDNELL, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainant, deposes as follows:

By Mr. COLE:

Q. Where do you reside?

A. At 1928 11th street, Washington, D. C.

Q. How long have you resided here?

A. About thirty-two years.

322 Q. Did you know Allison Nailor in his lifetime?

A. Yes, sir.

Q. How long did you know him?

A. I think about twenty-five years.

Q. What were his habits as to the use of intoxicating liquors during the time you knew him?

A. He has been drinking very hard ever since 1865, to my personal knowledge.

Q. About how frequently did you see him from 1865 up to the time of his death?

A. More or less every week until last summer, and sometimes every day.

Q. What were his habits as to the use of intoxicating liquors for the last five or six years of his life, as compared with what they were prior to that time?

323 A. He drank very hard. I had an opportunity of seeing him nearly every day. I was working near his stable, and he was drunk almost every day; so drunk that he had to be be taken home in a carriage.

Q. State whether he was drunk more frequently during the last six or seven years of his life than he was prior thereto?

A. I think he was, sir.

Q. During the last six or seven years of his life, about how frequently did you see him so much intoxicated that he would not control himself—have to be taken home?

A. I could not tell the exact number of times. I have seen him quite often staggering and falling around in low rum shops.

Q. Do you know the defendant, Catharine Conley?

A. I know her when I see her, sir.

Q. Did you ever see Mr. Nailor in her presence or with her?

324 A. I have. I had occasion last fall to go to his house to see him on some business, and had a conversation with him there. He told me to see his son Alley. I went to rent a house. He said he wasn't doing any business, wasn't fit to attend to any; that the boys were attending to his business; to go and see Ally.

(Defendants' counsel object to so much of the above answer as details a conversation with Mr. Nailor.)

Q. Was the defendant, Kate Conley, present at that time?

A. She was.

Q. What did she say, if anything?

A. She went out of the room, sir.

Q. What room were they in?

A. Back room, next to the kitchen, I think it was.

Q. What house did you go to rent from Mr. Nailor on that occasion?

325 A. House on E street, between 13th and 14th streets.

Q. Did you ever see Mr. Nailor in the presence of or with Kate Conley on any other occasion than the one above mentioned?

A. I think I saw her come after him once on D street, and saw them at the house on the Island once or twice.

Q. On what occasion and about when did you see her go for him on D street?

A. I think it was in 1874 I saw her come after him. I don't know what she wanted with him. I had no conversation with her.

Q. At what house or place was he at the time?

A. It was Burke's liquor store, on the corner of B and 13½ streets.

Q. What was he doing, if anything?

A. Drinking whiskey.

Q. How frequently did you see Mr. Nailor and talk with
326 him the last three or four years of his life?

A. Oh, quite often, sir; ten or fifteen times a month.

Q. What did he generally talk about?

A. Sometimes I would go to see him on business, sometimes about other things. He would get to talking about making trips, going with girls; that used to be his general conversation.

Q. What was the condition of Mr. Nailor's health the last two or three years of his life?

A. His health has apparently been pretty bad.

Q. State whether or not, in your opinion, Mr. Nailor was competent, say in the latter part of March, 1878, to understandingly make deeds for or otherwise dispose of large quantities of his real estate, say to the value of $20,000 or $30,000.

327 A. I haven't thought so for some time, from his general conduct and actions, or even long before that.

Q. State whether you remember seeing or conversing with him in March, 1878?

A. In March or April, one or the other, I am not certain which, I did have a conversation.

Q. What business, if any, did Mr. Nailor engage in the last six or seven years of his life?

A. He has been doing nothing, so far as I know, except riding around. He told me his children were attending to all his business.

Q. Did he ever talk to you on any occasion about Kate Conley?

A. No, sir; no more than I advised him to go home myself.

Q. Did he say anything to you in response?

328 A. He said: "You son of a bitch, I will break your neck and swear you died in a fit."

Cross-examined by Mr. CARRINGTON, Jr.:

Q. What is your business?

A. I have been contracting heretofore; am now keeping a grocery store.

Q. A grocery and liquor store?

A. No, sir.

Q. A temperance grocery store?

A. Yes, sir.

Q. Where were you in the habit of seeing Mr. Nailor?

A. I saw him very often on D street, 13th street, and 13½ street, and around the stable. I was working at the time on Ohio avenue.

Q. How long did you work on Ohio avenue?

A. On Ohio avenue, 13th, and 13½ streets, I was working there about a year, in the year 1874.

329 Q. How was it that you happened to be so frequently in that neighborhood other than the year 1874?

A. I kept a restaurant there from 1862 to 1865, No. 269 D street, between 13th and 13½ streets. Hudnell and Nolan was the firm.

Q. Since 1874 why were you so often in that neighborhood?

A. Different business transactions called me there, sometimes one thing and then another, sometimes to get a drink myself.

Q. Did these business transactions call you there nearly every day, and if so, what were they?

A. Sometimes looking for work, sometimes I would go there to see a lady or a man. I went sometimes once, sometimes twice a week, sometimes oftener, sometimes at night.

330 Q. What do you mean when you say "to see a lady?"

A. I mean just what I say—a lady—not a prostitute. The lady lives on Ohio avenue. I can tell your her name, if you want me to.

Q. When was the last time you saw Mr. Nailor taken home drunk in a carriage?

A. Some time in 1874; I can't give the exact date; that was a frequent thing.

Q. When was the last time you saw him intoxicated?

A. I can't mention the dates exactly.

Q. As near as you can.

A. I think I have seen him drunk within a year.

Q. You mean a year from this time, or within a year of his death?

A. I mean within a year of his death.

Q. He didn't drink as much then, within a year of his death, as formerly?

331 A. He has been drinking pretty hard from 1874 up to the time I last saw him to converse with him. He didn't seem to be drinking at that time much.

Q. Question repeated.

A. I couldn't say that. I wasn't with him all the time. He may have drank more, for all I know.

Q. How long have you been keeping a grocery corner 11th and U streets?

A. About two years and six months.

Q. And you saw Mr. Nailor quite as often during the time you kept store at the place mentioned as formerly?

A. Last summer I was sunstruck, and didn't see Mr. Nailor
332 at all; prior to that I saw him as frequently as formerly. I saw him last fall up to about six or seven weeks of his death.

Q. What did you do after giving up restaurant business?

A. I had a slop cart first, and then became a contractor under Bowen.

Q. Who have you talked to with reference to your testimony in this case?

A. With Mr. Cole, since I came to this office, except Mr. Wash. Nailor asked me to come down here.

Q. Where, when, and in whose presence did he ask you?

A. To-day; at my house; no one was present, except him and me.

DELAWARE HUDNELL.

Subscribed and sworn to before me May 21, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

333 *Deposition of Alexander Leadingham for Complainant.* (*Filed Jan.* 13, 1881.)

Whereupon ALEXANDER LEADINGHAM, a witness of lawful age, produced, sworn, and examined in behalf of complainants, deposes as follows:

By Mr. COLE:

Q. Where do you reside?
A. No 1149 8th street northwest, Washington, D. C.
Q. How long have you resided here?
A. Nearly fifteen years.
Q. Did you know Allison Nailor, Sr., in his lifetime?
A. Yes, sir.
Q. About how long did you know him?
A. Since in 1865.
Q. About how intimately did you know him during that time?

334 A. About as well as one man could know another.

Q. About how frequently did you see or meet him during the last seven or eight years of his life?

A. During the last seven or eight years, sometimes every day, sometimes every week, sometimes in a month.

Q. What were his habits as to the use of intoxicating liquors during the time you knew him?

A. At times I have seen him what I call crazy drunk, and then I have seen him sober.

Q. About how frequently did you see him drunk during the last seven or eight years of his life?

A. I hardly know how to answer that question. I always get out of the way of a drunken man when I see him.

335 Q. State whether you considered him an habitual drunkard during the last four or five years of his life?

A. I should term a man an habitual drunkard who got drunk every week or every month whenever he got a chance to do so.

Q. Testing Mr. Nailor by that definition, was he an habitual drunkard?

A. I should consider him an habitual drunkard.

Q. How frequently did you talk with Mr. Nailor during the last four or five years of his life?

A. Every time that I saw him, most.

Q. When did you last talk with him?

A. The last time was on the corner of 13½ and E street this spring a year ago. He was very feeble at the time and complained.

336 Q. Was he intoxicated at that time?

A. No, sir.

Q. What was the general state of his health during the last seven or eight years of his life?

A. When I talked with him he was always complaining and saying that he was no good. He would talk with me about money matters, about parties in the country who owed him money, and that he couldn't hear from them.

Q. What business, if any, did you have with Mr. Nailor during the last seven or eight years of his life?

A. I have had no business with Mr. Nailor since 1870 or 1871; my business with him prior to that time was for the Howard establishment on G street.

337 Q. When did you have that business with him?

A. That was in 1866, and it was not settled up until in the court last winter a year ago. He held ten of Mr. Howard's notes, $50 each. Mr. Howard could pay nobody when I took hold of the place. I told Mr. Nailor I would settle the notes with him; they were payable monthly. I paid six or seven of them that I got hold of. Mr. Howard had given him a diamond ring as collateral for these notes. The ring I considered to be worth $75 or $100; I couldn't say it was worth more. I went after Mr. Nailor at least a dozen and a half times for a period of a year or a year and a half trying to get the matter settled up, and at last one day he

338 told me he didn't know what he done with the notes, whether he had thrown them away—and he made the remark that it would make no difference, that Mr. Howard was a clever fellow.

Q. Were you offering to pay the notes?

A. Yes, sir; I went there to pay them and to get this ring; I would not pay them without getting the ring.

Q. What business did he transact or engage in during the last ten years of his life, if any?

A. I don't know any business that he was engaged in; nine years ago I saw him going round to collect money somewhere, but I thought it was more to go into restaurants than to collect money.

339 Q. What were his habits during the last ten years of his life—that is, how did he spend his time, so far as you saw or knew?

A. I would either see him in some of those places on 13½ street or in the little groceries in what is termed Hooker's Division, and also around the restaurants near the National Theatre.

Q. State whether, in your opinion, Mr. Nailor was competent, say in the latter part of March, 1878, to understandingly convey or transfer or otherwise dispose of a large quantity of his real estate, say to the value of twenty or thirty thousand dollars?

A. I shouldn't think that he was, nor do I think he was competent to do so for the last eight or ten years; I shouldn't wish him to do any for me, I know.

340 Q. State whether, in your opinion, Mr. Nailor was competent during the time mentioned in your last answer to understandingly transact any business of any considerable magnitude.

A. No, sir; he admitted that himself to me about three years ago; I used to talk a great deal to Mr. Nailor; we were very intimate, and he used to think a great deal of me.

Cross-examination by Mr. RUTHERFORD:

Q. What is your business?

A. Livery business; I keep a livery stable.

Q. Did you see Mr. Nailor frequently during the last two years of his life?

A. I saw him quite frequently up to this May a year ago; I would see him sometimes every day; sometimes once a week; some-
341 times once a month; I could not say positively.

Q. What were his habits as regards the use of intoxicating liquor during the last two years of his life, as compared with the time before that; were they better or worse?

A. That I could not say.

Q. Did you see him intoxicated as often during the last two years of his life as before that time?

A. I couldn't say that I did.

Q. During the last year of his life how often did you see him intoxicated?

A. I couldn't say that I saw him intoxicated at all during the last year.

Q. During the second year before his death, how was it?

A. That I couldn't say.

342 Q. Did you see him intoxicated at all during the second year?

A. I couldn't say positively.

A. LEADINGHAM.

Subscribed and sworn to before me this 21st day of May, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until May 22, 1879, at 2 o'clock p. m.

IRVING WILLIAMSON,
Examiner in Chancery.

MAY 22, 1879.

Further adjourned until Tuesday, June 3rd, 1879, at 1½ o'clock p. m.

343 *Deposition of Park D. Mills for Complainants.* (*Filed Jan.* 13, 1881.)

TUESDAY, *June 3rd*, 1879—1½ o'clock p. m.

Met pursuant to agreement aforesaid.

Present: C. C. Cole, of counsel for complainants, and Charles Thompson, Jr., of counsel for def't, and witnesses; whereupon PARK D. MILLS, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is Park D. Mills; I reside at 1232, on B street southwest, in this city I am a boatman by occupation, and have been a clerk on a steamboat for a number of years prior to the last three years.

344 Q. Were you acquainted with Allison Nailor, senior, in his lifetime.

A. Yes, sir.

Q. How long did you know him before he died?

A. I could not tell exactly. I know I saw him three or four weeks before he died.

Q. How long did you know him during his lifetime?

A. About three years.

Q. About how often did you see him during the time that you were acquainted with him?

A. As often as every other day, on an average.

Q. What were his habits as to the use of intoxicating liquors during the time that you knew him?

A. He always drank.

Q. To what extent?

A. To an extent that he got under the influence of liquor
345 one in a while, the same as I do myself, and was then incapable of transacting any business.

(The part of answer giving impression of the witness objected to by def't.)

Q. Did you ever see him intoxicated?

A. Yes, sir; I have seen him when I thought he was under the influence of liquor. He would talk about houses and rents, and then the woman that he lived with. I have drank with him myself.

Q. To what extent did he generally carry his drinking—to what degree of intoxication?

A. When I knew him he had a horse and phæton; they used to help him in and out of the phæton; men who were employed
346 in Washington Nailor's stables did that. He was more or less under the influence of liquor, and was unable to get in and out of the carriage, and that was why he was helped in and out of it.

Q. How often did you ever see him when he was not under the influence of liquor?

A. I was around the stable a good deal, and I never saw him but that I thought he was under the influence of liquor.

Q. What was the state or condition of his health during the time that you knew him?

A. Some days I would say to him that he looked better, and he would say he felt better, and was getting better, and then again I would say he looked feeble and bad, and then he would say he felt very feeble.

347 (Conversation with Mr. Nailor objected to by def't.)

Q. Now, just state what the condition of his health was, as a matter of fact, during the time you knew him, without regard to what he said about it.

A. He was very feeble.

Q. Did you talk with him much during the time that you knew him?

A. Yes, sir; every time I met him I encouraged him in regard to his health.

Q. How did his mind appear to be, vigorous or wreck[ed] on the occasion when you talked to him?

A. His mind appeared to be [a] wreck. He would wander from one subject to another.

Q. State whether, in your opinion, if at any time while you knew him he was competent to transact important business, such
348 as selling, transferring or disposing of large qantities of his real estate, say, to the value of $20,000 or $30,000?

A. No, sir; I do not think that he was.

(Opinion of witness objected to as irrelevant and immaterial.)

Cross-examination by Mr. THOMPSON:

Q. You say you have known him about three years, and that you have seen him every other day during that time. Now, please state about what hour in the day you would see him, and where.

A. At Washington Nailor's stable, between the hours of nine and twelve o'clock in the morning.

Q. What hours are you employed during the day?

349 A. From half-past seven until half-past four o'clock, with one hour at noon.

Q. Did you go to Mr. Nailor's stable every day at noon?

A. No; not specially. I used to be there quite frequently at noon. I was at Mr. Nailor's stables every day at noon.

Q. When you went there would you always find Allison Nailor, senior, there?

A. Nine times out of ten he was there.

Q. Was he always drunk when you found him there?

A. No, sir; he might be under the influence of liquor sometimes and not be drunk.

Q. You say on page 143 of your examination-in-chief that when you knew him he had a horse and phæton, and that they used to help him in and out of it, because he was under the influence
350 of liquor. Now, don't you know that it was not liquor, but, on the contrary, that he was a great sufferer from rheumatism, and that was the cause of his being unable to help himself?

A. I know nothing about his rheumatism, but I know that he was under the influence of liquor.

Q. At whose request did you come here to testify in this case?

A. At the request of Washington Nailor.

P. D. MILLS.

Subscribed and sworn to before me this 3rd day of June, A. D. 1879.

A. BROWNING,
Examiner.

351 *Deposition of James Belt for Complainants.* (*Filed Jan.* 13, 1881.)

JAMES BELT, a witness produced on behalf of complainants, and, being first duly sworn, did depose and say as follows:

By Mr. COLE:

My name is James Belt; I reside on D street, between 14th and 15th, in this city; I am a carpenter by trade.

Q. Did you know Allison Nailor, senior, in his lifetime?

A. I have known him for twenty years.

Q. About how intimately did you know him?

A. I knew him as well as anybody did; I lived in one of his houses for four years.

Q. About what time was it that you lived in his house?

A. About 1853 or 1854 that I first went there to live.

352 Q. About how frequently did you see him the last eight years of his life?

A. Very near every day; I lived in the same neighborhood with him.

Q. About how near was your residence to the place where he resided?

A. About eight or ten squares from it.

Q. What were the habits of Mr. Nailor as to the use of intoxicating liquors during the time that you knew him?

Q. When I first knew him he lived in the country, and would come to town and get on a spree and stay on it for two or three days, and then get off of it and go out home, but for the last eight years of his life he was drinking very hard and would be on a spree nearly every time I would see him.

353 Q. How were his habits in relation to his becoming intoxicated during the last eight or nine years of his life as compared with his habits of drinking before that time? At which period did he drink the most?

A. He was always going around into the lowest grog shops he could find; he drank more the last five or six years of his life.

Q. About how often did you see him intoxicated the last seven or eight years of his life?

A. Sometimes two, three, or four times a week.

Q. To what degree or extent was he generally intoxicated when you saw him in that condition?

A. I have often seen gentlemen have to put him in his buggy.

354 Q. How often did you talk with him during the last seven or eight years of his life?

A. Sometimes I would meet him and he would be friendly, and then again he would curse me to all the names he could lay his tongue to. I would talk with him sometimes two or three times a week.

Q. Did you know him about March, 1878?

A. Yes, sir.

Q. State whether he was still drinking at that time?

A. Yes, sir; he was.

Q. And whether to a greater or less extent than formerly, or about the same?

A. I think he drank more the last four or five years than he ever did.

Q. How frequently did you meet and talk with him during the last year of his life?

A. Sometimes two or three times a week; sometimes three
355 or four times a week.

Q. Do you remember of talking with him in March, 1878?

A. No, sir. I might have and might not.

Q. What was the condition of his health, say the last year of his life?

A. He was very feeble.

Q. And how was it during the last seven or eight years of his life?

A. He always appeared to be enjoying good health until the last year or so.

Q. What effect, if any, did his excessive drinking have upon his health and mind during the latter part of his life, say the last two or three years?

(Objected to generally by def't.)

A. I don't think he had his right mind when he was drinking. He would curse the best friend that he had in the world.

356 Q. State whether, in your opinion, in March, 1878, Mr. Nailor was in such a conditien, physically and mentally, as to render him competent to understandingly transact important buiness, such as disposing of, transferring, or conveying large portions of his real estate, say to the value of $20,000 to $30,000?

A. I think he was not.

Q. State how it was, in your opinion, seven or eight years ago, say in the fall of 1872?

A. I think he was all right then.

Q. Towards the last of his life, say the last year or two, when you talked to him, what was the general character and tenor of his conversation or talk; what did he talk about and how?

A. Sometimes I would meet him and he would ask me how
357 business was, and how I was getting along, and then again I would meet him and he would curse me.

Cross-examination by Mr. CARRINGTON:

Q. What are you doing now?

A. I am a carpenter, employed by a gentleman by the name of Davis, from Philadelphia.

Q. Was Mr. Nailor additicted to the use of liquor at the time you occupied one of his houses?

A. Sometimes he would come in from the country, get on a spree, and stay until some of them came in after him and took him home.

Q. When was the last time you saw Mr. Nailor?

A. About one week before last New Year's day. He was not intoxicated then. I talked with him at that time. He was so
358 feeble that I helped him through the stable. I don't remember what he talked of then. The next time before that that I saw him was two or three days before that, at Mr. Nailor's stable; he was under the influence of whiskey. I had no consultation with him on that occasion. I knew he was under the influence of liquor, because he cursed and abused his son Allison to all he could lay his tongue to. He was also staggering on that occasion. On that same day he was taken home Burke's liquor store.

Q. How often did you see him during the last year of his life?

A. Sometimes two or three times a week or nearly every
359 day, and then again I would not see him for a week or two.

Q. Have you had any conversation with any one in reference to your testimony in this case?

A. I have not, to my knowledge.

Q. Have you had a conversation with a man named Burke in reference to your testimony, or the case generally?

A. No, sir; I don't believe I ever spoke a dozen words to the man in my life.

Q. You have said that you have seen Mr. Nailor at low grog shops; what were you doing in such places?

A. I was only passing by and saw him. I don't visit low grog shops.

JAMES BELT.

Subscribed and sworn to before me this 3rd day of June, A. D. 1879.

A. BROWNING,
Examiner.

360 *Deposition of John F. Seitz for Complainant.* (*Filed Jan.* 13, 1881.)

JOHN F. SEITZ, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is John F. Seitz; I reside at 1007 on New York avenue, in this city. I am a baker by occupation.

Q. Were you acquainted with Allison Nailor, senior, in his lifetime.

A. Yes, sir.

Q. How long did you know him?

A. For thirty years, I think.

Q. About how intimately did you know him?

A. About as intimately as any one could know another in business.

361 Q. Did you know him as intimately during the last seven or eight years of his life as you did before?

A. Yes, sir.

Q. What were his habits as to the use of intoxicating drinks during the time you knew him?

A. The last seven or eight years he has been an habitual drunkard.

Q. How was it before that time?

A. He was a moderate drinker; would get tight occasionally.

Q. How frequently did you see him intoxicated during the last eight or nine years of his life?

A. I very seldom ever saw him sober.

Q. To what extent did he go in drinking and becoming intoxicated?

A. I have been to the stable quite often, and have seen him put in the buggy and sent home in charge of somebody.

362 Q. What was the state or condition of his health during the last eight or nine years of his life?

A. I think he was incompetent to attend to any business.

Q. About how frequently did you converse with him or hear him converse with others during the last eight or nine years of his life?

A. Sometimes two or three times a week, sometimes two or three times the same day, and sometimes it would be a month or six weeks before I would meet him.

Q. About how frequently during the last year of his life?

A. More the last two years than at any time prior to that.

363 Q. What was the character of his conversations generally on those occasions; what subjects did he talk about, and how?

A. The conversations were in relation to the lease of the stable to Washington, and also about Allison's stables; then he would launch off and curse both of his sons, and threaten to dispossess them. That was generally the subject of his conversations. On one occasion I was sitting at Wash.'s stable, and Mr. Nailor wanted to know what I wanted there, and threatened to strike me with his cane, and I had not said a word to him.

Q. What business did he do or engage in during the last seven or eight years of his life, if any?

A. I don't think he was competent to do any business, and in fact did not do anything.

364 Q. State whether, in your opinion, Mr. Nailor was competent, say, in March, 1878, to transact understandingly important business, such as the disposition of a large portion of his real estate by transferring it by deed or otherwise?

A. I don't think he was from 1876 down to his death, knowing him as I did prior to that and his business qualifications; he changed a great deal.

Q. What is your opinion of his competency or qualification for the transaction of business, say, as far back as the fall of 1872?

A. I don't think he has been competent to attend to any business for the last eight years, and I don't believe he did attend to any.

365 Cross-examination by Mr. CARRINGTON:

Q. Are you in business with your father and brother?

A. Yes, sir; we keep a bakery at 1007, on New York avenue.

Q. What portion of the business do you attend to?

A. I am general manager.

Q. Do you attend a stand in the Center and Northern markets every day?

A. Yes, sir; from four o'clock in the morning until about two in the afternoon.

Q. What do you do after that hour—after two o'clock?

A. I attend to buying flour and other things for the bakery, and visit the different places where flour is sold, looking after the inspector of flour, who is under me, I being the commissioner of flour for Washington city, and either going or returning I stop
366 and visit Wash. Nailor.

Q. You and he are warm personal friends, are you not?

A. We are very good friends.

Q. Did you ever transact any business with Allison Nailor, senior?

A. Not directly, but indirectly, through my father, for fifteen or twenty years.

Q. You have spoken of Mr. Nailor abusing his two sons; what seemed to be the cause?

A. I don't think that he knew what he was doing, because he had no good grounds for it.

Q. Did he say anything about their having taken his property or refusing to pay him money, or the like?

A. No, sir; it seemed to be because the boys upheld their mother, particularly so with Wash. He and Allison quarreled so
367 often that I don't know what they did quarrel about.

JNO. F. SEITZ.

Subscribed and sworn to before me this 3rd day of June, A. D. 1879.

A. BROWNING,
Examiner.

Adjourned until Wednesday, June 4th, 1879, at 1½ o'clock p. m.

A. BROWNING,
Examiner.

Deposition of John T. Price for Complainants. (*Filed Jan.*, 1881.)

WEDNESDAY, *June 4th*, 1879—1½ o'clock p. m.

Met pursuant to adjournment.

Present: C. C. Cole, of counsel for compl'ts, and Charles
368 Thompson, Jr., of counsel for def't, and witnesses; whereupon JOHN T. PRICE, a witness produced on behalf of compl'ts, and sworn, did depose and say as follows:

By Mr. COLE:

My name is John T. Price. I reside in Washington, D. C., at number 608 B street southwest. I am in the livery business on 6th street, near Pennsylvania avenue.

Q. Did you know Allison Nailor, senior, in his lifetime?

A. Yes, sir; I knew him for twenty-five years, and did business with him about twenty-five years ago, I think.

Q. About how intimately were you acquainted with him during that time?

A. I was at his business place frequently, and knew him very well.

369 Q. About how often did you see him during the last year of his life?

A. Probably four or five times during that time.

Q. What were his habits as to the use of intoxicating liquors during the time that you knew him?

A. His habits in that respect were very bad—so much so that when I was in his company I would always get out of his way.

Q. How did his habits in that regard, during the last year or two of his life, compare with what they formerly were; say, when you first knew him?

A. I don't think that at times during the last two or three years of his life he knew what he was doing, and have reasons for thinking so.

Q. What are those reasons?

370 A. Because he did entirely different from what he agreed to do with me.

Q. On the occasion that you saw him during the last two or three years of his life what was his condition?

A. At times I have seen him, and he was very pleasant, and then, again, I have gotten out of his way to keep from meeting him.

Q. What was his condition as to soberness or drunkenness on those occasions?

A. Sometimes he appeared to be all right, and sometimes he had been drinking, and I got out of his way, because I thought he did not know what he was doing.

Q. How frequently did you converse with him; say, during the last two or three or four years of his life?

371 A. I could not say how often. The reason I did not converse with [him] much was because it was not pleasant for me to do so, on account of his conduct.

Q. Do you remember when you last saw him to talk to him; how long was it before he died?

A. I cannot tell the time. It was about the time he was in the police court, when he or the woman that he lived with was arrested.

Q. What business, if any, did you transact with him during the last two or three years of his life?

A. I bought two carriages from him, but it has been about four years ago, I think. It may have been longer than that. That was the last business transaction I had with him.

372 Q. State whether in your opinion Mr. Nailor was in such condition physically and mentally that he was competent, say in the latter part of March, 1878, to transact important business, such as conveying or transferring a large quantity of his real estate worth, say, $20,000 or $30,000?

(Objected to generally by def't.)

A. I don't think he was competent to transact any business for the last two years, or else he would not have done as he did.

Cross-examination by Mr. THOMPSON:

Q. On page 165 of your direct examination, in answer to a question by Mr. Cole, you state that sometimes he appeared to be
373 all right, and sometimes as if he had been drinking. Now, in which condition did you see him most frequently?

A. I could not tell whether he had been drinking or not, but he acted very singular and I would get out of his way.

Q. You say on page 167 of your examination, in answer to a question by Mr. Cole, "I don't think he was competent to transact any business for the last two years, or else he would not have done as he did." Is that the only reason you can give for his incompetency?

A. I could not say that exactly, but I would not have done any business with him.

Q. Question repeated.

A. I don't really think that Mr. Nailor was competent for
374 some time prior to his death to transact business.

Q. Give us your reasons for thinking so, if you have any.

A. From remarks that I heard him make in my stable, but I could not repeat them now, nor any of the conversation, we then had, nor state when it was. Mr. Nailor was on his way from the court-house at the time. I paid no attention to the remarks, because Mr. Nailor's family matters did not concern me.

JOHN T. PRICE.

Subscribed and sworn to before me this 4th day of June, 1879.

A. BROWNING,
Examiner.

375 *Deposition of George Seitz for Complainant-.* (*Filed Jan.* 13, 1881.)

GEORGE SEITZ, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is George Seitz. I reside at 1224 on 6th street N. W., in this city. I am a baker by occupation.

Q. Were you acquainted with Allison Nailor, senior, in his lifetime?

A. Yes, sir; I knew him for forty years.

Q. About how intimately did you know him during that time?

A. I transacted business with him several times.

376 Q. About how often did you see him during the time that you were acquainted with him?

A. I saw him two or three times a week for thirty years.

Q. Did you see him as frequently during the last eight or nine years of his life as you did in former years?

A. I did not.

Q. About how frequently did you see him during the last eight or nine years of his life?

A. During the last two years of his life I saw him but three or four times, but up to that time I saw him frequently.

Q. What were his habits as to the use of intoxicating liquors during the time that you knew him?

A. About eighteen months ago I spoke to him in Allison
377 Nailor's stables and he hardly knew me. He looked like he was simple. I don't know so much about the liquor.

Q. What did he do or say in the stable on the occasion referred to that left the impression on your mind that he was simple?

(Any conversation between Mr. Nailor and the witness objected to by def't.)

A. I asked him a question and the answer was so simple, and I thought it strange an old friend would treat me so.

Q. Do you remember the question and answer?

A. I said, "Mr. Nailor, how is business now?" He replied, "What is that your business?" and then I stopped. Before that we always talked on business.

378 Q. Were your relations friendly with him at that time, or otherwise?

A. Yes, sir.

Q. Had he ever spoken to or treated you in that way before?

(Objected to as immaterial and irrelevant by def't)

A. No, sir; he was always friendly.

Q. When did you last see him and talk with him?

A. Fifteen or eighteen months ago.

Q. Can you tell where?

A. At Allison Nailor's stables.

Q. What did you and he talk about at that time?

(Objected to by defendant.)

A The last time I spoke to him was when he replied to me as I have stated above.

Q. Did you ever see him after that time?

A. Only once, on the avenue, in his buggy.

Q. Did you ever see him drunk or under the influence of
379 intoxicating liquors?

A. Yes, sir; when John Hammack kept a restaurant on 15th street.

Q. Did you frequently see him intoxicated or otherwise during the time you knew him?

A. Only once.

Q. When did you transact the last business with him?

A. About 1856 or 1857.

Q. State whether in your opinion Mr. Nailor was in such condition, physically and mentally, say in the latter part of March, 1878,

to render him competent for the transaction of important business understandingly, such as conveying or transferring a large quantity of his real estate—say, to the amount of from $20,000 to $30,000?

380 (Counsel for def't objects to the opinion of the witness being given, and, secondly, the witness has already testified that he has not had any conversation with Mr. Nailor for eighteed months before he died, and consequently cannot testify to the fact.)

A. He was not capable to transact any business when I last saw him.

Q. What business, if any, was Mr. Nailor engaged in the last ten years of his life?

A. I don't think he was in any business.

Cross-examination by Mr. THOMPSON:

Q. Don't you know, Mr. Seitz, that Mr. Nailor was considered by everybody that knew him to be an extraordinary good business man?

A. Prior to ten years ago he was.

381 Q. Didn't you and Mr. Nailor, several years ago, have a falling out about some business?

A. No, sir; we never had a falling out, but have always been friendly.

Q. Are the reasons that you have given here the only reasons you have of Mr. Nailor's incompetency to transact business?

A. Yes, sir.

GEO. SEITZ.

Subscribed and sworn to before me this 4th day of June, 1879.

ARTHUR BROWNING,
Examiner.

Adjourned until Friday, June 6th, 1879, at 1½ o'clock p. m.

A. BROWNING,
Examiner.

382 *Deposition [of] William B. Reed for Complainant-. (Filed Jan. 13, 1881.)*

FRIDAY, *June 6th*, 1879.

Met pursuant to adjournment.

Present: Counsel on both sides and the witness, WILLIAM B. REED; whereupon the latter, being first duly sworn, did depose and say as follows:

By Mr. COLE:

My name is William B. Reed; I reside at 1812 K street in this city; I am a grocery merchant.

Q. Did you know Allison Nailor, senior, in his lifetime?

A. Yes, sir; I have known him for the past twenty-five years.

Q. How intimately did you know him during that time?

A. I knew him very well; I visited his house while he lived
383 in the country, and the city too, quite often; I have stayed at his house in the country for two or three weeks at a time prior to the year 1865, but since that time I have met him frequently at his house and on the street up to the time that he left his house.

Q. How often, if at all, did you see him after he left his house and went to live with the defendant, Catharine Conley?

A. I don't know when he left and went to live with her only from what I have heard. I have seen him on the street and spoken to him about a grocery bill I had against him, and in 1870 I called at his house for a settlement and was informed by Mrs. Nailor that I would have to see Mr. Nailor. I did not bother about it any
384 more for a month or so, and then I found out where Mr. Nailor was, and called on him on E street, between 17th and 18th streets. I called there several times, and once or twice after he he had just gone in there, and a woman there told me that he did not live there. She always told me that he was not there and did not live there. One day I happened to be going by there and I saw Mr. Nailor standing back in the house, and he was in his bare feet. I got out of my buggy and went in. Mr. Nailor was waiting on a little child in the store when I got in. After the child went out I I spoke to him. At first he did not appear to recognize me.
385 After he recognized me he asked me what my business was, and I told him I called for the settlement of a little account I had against him. He asked me what the account was for. I told him for groceries for his home on 13th street. He replied that they had gotten the groceries and let them pay for them, and that he had nothing to do with it, and he also said that he had nothing to do with his property at that time. This was in the early part of 1870; in April, I think.

Q. State about how frequently, if at all, you called on Mr. Nailor at the above-mentioned place after the time mentioned in your last answer.

386 A. I called on him at that place probably fifteen or twenty times within the next two years. It may have been within one year.

Q. What was his personal appearance and condition on the several occasions that you saw him at the house above mentioned?

A. Several times his condition was repulsive in the extreme and disgusting. Once or twice the woman came in and asked me what my business was there. I don't know who the woman was, but suppose it was the defendant in this suit. I think it was the defendant, because on one occasion I saw her smoothing his forehead in the back room, and before I got in there she closed the door and left
387 me in the front room or store. She said he was sick and could not be seen. The first time I saw him there he was in his bare feet, his pants were open in front, with no suspenders on; his face was disfigured, I judge from liquor, and I scarcely recognized him at first. After noticing his condition I told Mrs. Nailor it was no use for me to look to him for the payment of the bill and that I would have to look to her for it. It being the first time that

I ever saw a person of respectability in the condition I saw him in, I was greatly surprised and it made a great impression on me. I would not have been more surprised if I had seen him in his coffin.

388 Q. When you first saw him on E street at the place above mentioned how long had it been since you had seen him before that time?

A. Possibly a month or two.

Q. On the first occasion that you saw him on E street state whether you at first recognized him.

A. Only by his nose and the upper portion of his face. His eyes were peculiar and very small pupils. The reason I did not recognized him was because there was a month or six weeks' growth of beard on his face; his cheeks were very much puffed and looked like they were inflamed; his shirt was open the full ex-

389 tent of his bosom and exposed his naked breast; he had no undershirt on, his pants were open in front, and he was in his bare feet. This was in the latter part of April, 1870. I warranted Mrs. Nailor on the account that he owed me, and he made no defence to the suit, and it was afterwards paid to me by Mr. Clark, the son-in-law of Mr. Nailor, who was the agent of Mr. Nailor. Mr. Nailor told me that he had nothing to do with it, and that I would have to get the money from Mr. Clark. I afterwards opened an account in the name of Mrs. A. Nailor. This ended all the business that I had with Mr. Nailor.

390 Q. On the several occasions that you saw Mr. Nailor at the house on E street above mentioned state whether he was intoxicated on any of the occasions.

A. From appearances I should say that he was.

Q. On each occasion, or only a part of them?

A. On every occasion; one time in particular he asked me to take a drink and I declined. He was standing in the back room, and on the stand was a decanter and a pitcher. He remarked that he drank whiskey and milk, and he poured some whiskey and milk in a glass and drank it down.

Q. On the occasions that you visited him in relation to the account, state whether you had any conversation with him on any other subject than the account.

391 A. No, sir.

Q. State how often, if at all, you saw Mr. Nailor after you had sued him on the account.

A. Occasionally around his son's stable and driving on the street.

Q. Did you ever converse with [him] after that time?

A. Not directly, but have been in his company when he was talking around the stable.

Q. What was his condition generally on the occasions that you saw him after you had sued him on the account; was he generally sober or under the influence of intoxicating liquor?

A. I could not say except from appearances. From appearances the most of the time he seemed to me to be in a stupor,

392 but whether it was caused by drink or not I could not say.

Q. Do you remember the last time you ever saw him?

A. Yes, sir; I think it was a month or six weeks before his death.

Q. State as near as you remember the time that you sued him on the account.

A. April, 1873, the 13th or 15th.

Q. State whether, in your opinion, Mr Nailor was competent, say in the fall of the year, 1872, to understandingly transact important business, such as conveying or disposing of real estate to the value of from $2,000.00 to $5,000.00?

A. My opinion is that at the times I saw him he was not.

393 If I was going to buy I would not have bought from him. I told Mrs. Nailor and both of her sons that if I had anything to do with it I would send him to an insane asylum. I would have felt competent at that time to swear that he was insane at that time.

Q. State whether, in your opinion, Mr. Nailor was competent in the latter part of March, 1878, to understandingly transact important business such as conveying or otherwise disposing of real estate to the value of from $20,000.00 to $30,000.00?

A. I don't think he was competent in 1878. I went away to Europe in July, 1878, and before that time, in the same year,

394 I saw him two or three times a month, and once, shortly before I went away, I saw him at a saloon near the National Theatre very much under the influence of liquor.

Cross-examination by Mr. CARRINGTON:

Q. Does Mrs. Nailor and the family now deal with you?

A. Yes, sir.

Q. What are the relations between you and Mr. Washington Nailor?

A. Friendly.

Q. Are you not one of the sureties upon the injunction bond given in Montgomery county, Maryland. in a case wherein these same complainants are complainants and Catharine Conley is defendant?

A. I signed some paper for Mr. Washington Nailor, but I do not know what it was. I think it was some kind of a bond in regard to the payment of rents.

WM. B. REED.

Subscribed and sworn to before me this 6th day of June, 1879.

A. BROWNING,
Examiner.

395 *Deposition of Patrick Brennan for Complainant-.* (*Filed Jan.* 13, 1881.)

PATRICK BRENNAN, a witness produced on behalf of complainants, and sworn, did depose and say, as follows:

By Mr. COLE:

My name is Patrick Brennan. I reside at No. 408, on 1st street northwest. I own and drive a hack.

Q. Were you acquainted with Allison Nailor, senior, in his lifetime?

A. Yes, sir; I knew him since 1851.

Q. About how intimately did you know him?

A. I worked for him awhile in the fall of 1851, and again in 1852.

396 Q. About how often did you see him from the time you first became acquainted with him until his death?

A. Very frequently.

Q. State whether you saw him as frequently during the last six or seven years of his life as you did before that time.

A. I saw him as frequently, except during the time I worked for him, when I saw him every day.

Q. How was it the last two years of his life?

A. I did not see him as frequently then as I did before.

Q. About how often did you see him the last two years of his life?

A. Sometimes twice or three times in one day, and sometimes it may have been a month before I would see him. I have had

397 no conversation with him since 1871.

Q. Have you heard him converse with others since that time?

A. No, sir; I don't think I have.

Q. Whenever you saw him during the last six or seven years of his life, where did you generally see him?

A. At different places; sometimes on the street, sometimes in his buggy, and sometimes with a man named Riley, who lived in one of his houses.

Q. What was his condition generally on the occasions you saw him during the last six or seven years of his life?

A. I don't think I ever saw him but once that I did not think he was under the influence of liquor, and then he was fixed up

398 and looked well, and was sitting in front of Allison Nailor's stable.

Q. What was his personal appearance on the other occasions that you saw him?

A. He looked like any man would look that drank to excess, and looked rather rough for a man of his means.

Q. What were his habits as to the use of intoxicating liquor when you first knew him?

A. I don't think he drank anything except when he went on a spree, perhaps once a year, and then his wife or his sons would have to go for him and take him hime.

Q. About what time did he form the habit of becoming intoxicated more frequently?

A. I don't know exactly what year, but I think in 1868

399 Thompson Nailor, his brother, came to buy a carriage from me, and it was about that time that I observed he was drinking more frequently than formerly.

Q. What was the last conversation you had with him?

A. It was talking about a settlement for my carriage, which I had

sold on his order nearly three years before, and the conversation was about the settlement for it. I was continually after him about it.

Q. What was Mr. Nailor's condition on that occasion?

A. He acted like a crazy man; he jumped around back and forward and cursed and then I left the house.

Q. Was he drunk or sober on that occasion?

A. I should say that he was either drunk or out of his mind.

400 Q. When was that?

A. I think in 1870 or 1871.

Q. Where was it?

A. In a house on E street, between 17th and 18th streets.

Q. Did you hear of his leaving home and going to live with Catharine Conley?

A. Yes, sir; I heard that he had gone away from home to live with some woman, but I did not know her name.

Q. Was this last conversation of yours with him before or after you heard that he had left home?

A. After.

Q. What business, if any, did Mr. Nailor engage in after the time he left home?

A. I believe he opened a little grocery and liquor store.

Q. Were you ever at the store?

A. Only once.

Q. Who did you see there in charge of the store?

A. I saw him and a woman.

401 Q. State whether in your opinion at the time you last conversed with Mr. Nailor as above related by you, or at any time after that during his life, he was in condition and competent to understandingly transact important business.

A. No, sir; he was not.

Cross-examination by Mr. CARRINGTON:

Q. Of What nationality are you?

A. Irish.

Q. What other occupation have you followed besides that of hackman, at any time?

A. I have dealt in real estate, built houses, and bought and sold horses and carriages.

Q. You sued Mr. Nailor on this transaction?

A. Yes, sir.

Q. Was there a trial by jury?

A. No, sir; on the day of trial it was settled by Thompson

402 Nailor and son. I think I wore out six pairs of shoes in going after and looking up Mr. Nailor before I sued him. He put the case off in various ways after I sued him.

PATRICK BRENNAN.

Subscribed and sworn to before me this 6th day of June, 1879.

A. BROWNING,
Examiner.

Adjourned until Monday, June 9th, 1879, at 2½ o'clock p. m.

A. BROWNING,
Examiner.

Further adjourned until Tuesday, June 10, 1879, at 2.30 p. m.

403 *Deposition of Henry L. Turner for Complainant-.* (*Filed Jan.* 13, 1881.)

TUESDAY, *June* 10, 1879—2.30 p. m.

Met pursuant to agreement.

Present: C. C. Cole, for complainants, and Messrs. Rutherford & Thompson, for def't.

By agreement of counsel the taking of testimony is proceeded with by the undersigned; whereupon HENRY L. TURNER, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

Q. Please state your occupation and residence.

A. I keep a boarding-house at 1423 D street northwest.

Q. How long have you lived in Washington, D. C.?

A. Since the year 1836.

404 Q. What business have you been engaged in during that time?

A. I have been engaged in different business; principally I have been keeping a boarding-house.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. Yes, sir.

Q. How long were you acquainted with him?

A. Ever since the year 1836.

Q. About how intimately did you know him during that time?

A. I met him daily almost.

Q. About how intimately did you know him during the last seven or eight years of his life?

A. I met him every day most; I had business with him.

Q. How was it the last year of his life?

A. I saw him just as often and even oftener in his

405 latter days, nearly every day, except Sunday.

Q. How often did you talk with him?

A. Every time I met him.

Q. Was that true during the last seven or eight years of his life also?

A. Yes, sir.

Q. What were his habits as to the use of intoxicating liquor during all the time you knew him?

A. Well, he was always ready for a drink, drinking pretty nearly all the time.

Q. How did his habits in that particular in the latter part of his life compare with what they were when you first knew him?

A. The latter part of his life was mixed up; he did not appear to be the same man at all as he was when I first knew him.

406 Q. Did you ever see him intoxicated?

A. I have, sir; very often.

Q. At what period of his life did he drink to intoxication most frequently—when you first knew him or in the latter part of his life?

A. In his latter days.

Q. About how often did you see him intoxicated during the last seven or eight years of his life?

A. He was drunk almost daily; I never, to judge from his actions, considered him sober at any time.

Q. Did this continue until the time of his death?

A. Until the last time I saw him.

Q. To what degree of intoxication did he generally drink during the last seven or eight years of his life?

A. He appeared to be pretty full most of the time.

407 Q. What effect, if any, did his intemperance have upon his mind?

A. It appeared to unfit him for business.

Q. When did you last see him?

A. I think it was about one week or a few days before his death.

Q. Did you talk with him at that time?

A. I did, sir.

Q. Do you remember the conversation?

A. Yes, sir; it was about a matter between him and myself, a money matter.

Q. Do you remember of talking with him in the spring of the year 1878?

A. Yes, sir.

Q. About how frequently?

A. Say once a week, at least that.

Q. What were your conversations about, generally, if you remember?

(Objected to by counsel for defendant.)

A. I couldn't say about any particular thing, business at
408 times—such things as that.

Q. State whether, in your opinion, say in the latter part of March, 1878, Mr. Nailor's mind was in such condition as to enable him to understandingly transact important business, such as conveying or disposing of real estate, to the value of twenty or thirty thousand dollars?

A. I don't think it was, sir. I shouldn't have liked him to do any business for me at that time.

Q. What is your opinion of his competency to transact business, say in November, 1872?

A. I hardly think he was competent at that time.

Q. What was his personal appearance generally, the last seven or eight years of his life?

A. He generally appeared to be kind of stupefied to me.

409 Q. How about his clothing and appearance for cleanliness, &c.?

A. He was moderately, plainly dressed, not so cleanly as he was formerly.

Q. Did you ever see him in the presence of the defendant, Catharine Conley?

A. No, sir; I never did. I did see him pass my house in a buggy with her more than once.

Q. Did you ever hear him speak of her or talk about her?

A. I don't think I did.

Cross-examined by Gen'l RUTHERFORD:

Q. Mr. Turner, what other business, except keeping a boarding-house, have you been engaged in since you have lived in Washington?

A. I have been at one time interested in a sporting house.

Q. What do you mean by "a sporting house"—a gambling house?

410 A. Yes, sir; that was a good many years back.

Q. You say that during the last seven or eight years of his life you met him every day and had business with him; now state what that business was?

A. It was, when I met him, trying to get a settlement with him for money that he owed me.

Q. What did he owe you money for?

A. Borrowed money.

Q. Did you have any other business transactions with Mr. Nailor during the last seven or eight years of his life, except in connection with borrowed money?

A. Nothing, except I bought some wood of him.

411 Q. Were you afraid to lend him money for fear he would forget the transaction, or did he give you due bills or notes for the amounts borrowed?

A. I wasn't afraid to lend it to him. We had loaned each other money frequently. He never gave me notes or due bills; there was never any writings between us.

Q. So it appears you considered him a pretty careful business man, did you not?

A. Not of late years.

Q. Are you in the habit of loaning money to people in whose business capacity and of whose powers of mind you have doubt?

A. No, sir.

Q. How often did you see Mr. Nailor during the last two years of his life?

A. I saw him most every day—pretty nearly every day.

Q. Did you converse with him on every one of these occasions?

412 A. I passed the time of day with him; had no particular conversation with him every time.

Q. How did his habits as regards the use of intoxicating liquors

during the last years of his life compare with the periods before that; did he appear to drink more or less?

A. He appeared to drink more towards his latter end than he did previously.

Q. Did you have any business transactions with him in the last year of his life?

A. No, sir.

Redirect by Mr. COLE:

Q. When did you loan the money to Mr. Nailor mentioned in your cross-examination?

A. I think the last transaction of that kind we had was
413 in about the year 1870. I never loaned him any after that time.

Re-cross by Gen'l RUTHERFORD:

Q. You state in your direct examination that you "had a talk with Mr. Nailor about one week or a few days before his death, and that it was about a matter between him and myself—a money matter;" explain what it was.

A. Money that he owed me.

Q. So you were not correct in your reply to the last question of Mr. Cole?

(Objected to by Mr. Cole because there is no inconsistency between the answer to my last question and the one given last in reply to Gen'l Rutherford.)

A. I gave it to you just as it happened.

Q. Please explain what this last transaction, this money
414 matter, was; was it for money loaned, or about any other transaction?

A. Money loaned.

Re redirect by Mr. COLE:

Q. When did you loan Mr. Nailor the money about which you conversed with him a few days before he died?

A. It was in 1870, I think, sir.

H. L. TURNER.

Subscribed and sworn to before me this 10th day of June, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

Deposition of Job W. Angus for Complainants. (*Filed Jan.* 13, 1881.)

415 JOB W. ANGUS, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

Q. Where do you reside?

A. In Washington city.

Q. What is your occupation?
A. I am a builder.
Q. How long have you resided in Washington?
A. Thirty-three years.
Q. Did you know Allison Nailor, Sr., in his lifetime?
A. I did.
Q. How long did you know him?
A. Twenty-five years.
Q. About how intimately did you know him?
A. Quite intimate during the war.
Q. And how was it after the war?
A. Intimate until 1872 or 1873; I have been away for the last five years.

A. About how often did you see Mr. Nailor after the war
416 and up until the time yon went away, say in 1872 or 1873?
A. Sometimes two or three days in succession, and then again not for a week, perhaps longer.
Q. Did you or not see him as frequently after he left his family as before?
A. No, sir.
Q. About how often did you see him after he left his family?
A. Well, not so often; maybe once a week; maybe twice a week. I left here in 1874.
Q. What were his habits as to the use of intoxicating liquors during the time you knew him?
A. Sometimes he was very fond of his whiskey.
Q. Did you ever see him intoxicated?
A. Yes, sir.

Q. How often.
417 A. Oh, very often. I have helped to carry him home, helped his son.
Q. At what period ot his life did he drink to intoxication most frequently?
A. That was along in 1862, 1863, and 1864, up until 1870.
Q. Did he or not drink to intoxication as frequently or more so—say from 1869 up until 1874—when you say you left here, as he did prior to 1869?
A. I didn't see him so often after 1870. My business didn't call me up his way so much.
Q. About how often did you see him talk with him after the fall of 1870?
A. Not very often, sir. I seldom talked with him more than to pass the time of day.
Q. When did you last see him?

A. I saw him, I think, a month before he died.
418 Q. How often did you see him the last year that he lived?
A. But that once. I had been home about six months when he died.
Q. What was his personal appearance and condition—say from 1870 or until the time you left?

A. He looked rather broken down to me. I do not recollect his dress.

Q. How did his condition during that time compare with what it was in former years—say from the close of the war up until 1870?

A. During the war at times he would look well dressed, and then when he would get on one of his turn-arounds he would look very much dilapidated for a week or two.

Q. What business, if any, was he engaged in the last of your acquaintance with him—say from 1869 up to the time
419 you left?

A. I didn't know that he was in any direct business himself.

Q. State whether, in your opinion, from your knowledge of Mr. Nailor and his condition, he was competent to understandingly transact important business, such as conveying or disposing of valuable real estate—say in the fall of 1872, and from that time up, so long as you knew him?

A. I should think not.

Cross-examination by Gen'l RUTHERFORD:

Q. Where do you reside in the city?

A. No. 1322 L street northwest.

Q. Has your business been that of a builder during all the time you have resided here?

A. Yes, sir.

Q. Was your place of business in the vicinity of that of Mr. Nailor?

420 A. Yes, within a few blocks. At one time, when I was engaged at the Smithsonian, my shop was there; at another time it was on Seventh street, opposite the market-house; it was there for fifteen years. Afterwards it was on 11th street, near the canal.

Q. Did you have any business transactions with Mr. Nailor at any period, and if so, when?

A. Very little; during the war I was security for a tenant of his, and also did a little repairing for him.

JOB W. ANGUS.

Subscribed and sworn to before me this 10th day of June, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned to June 12th, 1879, at 2.30 p. m.

421 *Deposition of Joseph H. Hilton for Complainants.* (*Filed Jan. 13, 1881.*)

JUNE 13, 1879.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., solicitor for complainants, and Mess-s. Rutherford, Carrington, and Thompson, solicitors for defendants;

whereupon JOSEPH H. HILTON, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

Q. Where do you reside?

A. At 1009 G street northwest, Washington, D. C.

Q. How long have you resided in Washington?

A. In Georgetown and Washington all my life, except a short period, when I was backwards and forwards.

Q. What is your occupation?

422 A. I am carrying on the house, sign, and ornamental painting business at this time.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. I knew him intimately for thirty-five or forty years.

Q. About how intimately did you know him?

A. When a boy I worked for him; driving an omnibus for him in early life. In manhood I dealt with him and did business for him—legal and otherwise.

Q. How intimately did you know him the last two or three years of his life?

A. I can't say that I was thrown in contact with him often during the last two or three years of his life, except upon one occasion, and that was some time last spring a year ago—I think in

423 May. That's my recollection.

Q. About how often did you see him during the last two or three years of his life?

A. I can't answer as to the number of times; I suppose several; two or three; I can't be precise.

Q. Did you talk with him on each of the occasions that you met him?

A. I hardly ever met him that I did not have some conversation with him; he was always friendly with me.

Q. What was the occasion of your seeing him on the occasion above mentioned by you in May?

A. I went to see him about painting a house on 12th street, between C and D streets northwest; I don't remember the number; there was no one living in it; it was being reconstructed;

424 I don't know who lives in it now.

Q. Go on and state any conversation you had with Mr. Nailor at that time in reference to the repairing and painting of that house.

A. I went to his house, rang the bell, and was admitted; he came into the parlor, and I told him I had come to see him about getting the painting of the house he was repairing on 12th street; we then talked of his general health and one thing and another, and he remarked to me that he was hardly fit for anything or any business; that he was killed up with a complication of diseases; my attention was then drawn to his appearance and his manner,

425 and I thought he was in a state of stupefaction; he didn't appear to me to be the same Allison Nailor that I knew in

former years; we changed then from the subject of his health, and I talked to him about painting that house; he said, "Joe, I don't know when it will be ready to be painted," and I said, "I will leave you my card;" he received that, and he then remarked to me that he had employed our old friend Hillary to do the plumbing, but that he, Mr. Nailor, was really not fit to attend to anything.

Q. What did he say, if anything, on that occasion about the use to which he intended to put that house when the repairs were completed?

A. I don't think he said anything at all to me about his intentions.

426 Q. What time in the day was this?

A. This was between seven and eight o'clock in the morning.

Q. What was the condition of Mr. Nailor at that time in relation to sobriety?

A. I thought he was at that moment strongly under the influence of liquor.

Q. What was his personal appearance and condition generally at that time?

A. He seemed to me to be infirm, both in body and mind, and I thought suffering too.

Q. State whether, in your opinion, Mr. Nailor was competent at that time to transact important business, such as conveying or disposing of valuable real estate?

427 A. I shouldn't think so at that moment. I don't think he was in a condition.

Q. How long had it been before that time that you had seen him?

A. I couldn't possibly tell; I used to meet him quite often; I couldn't fix the time.

Q. From your knowledge of him during the spring of 1878, say whether, in your opinion, he was competent to understandinly transact important business in the latter part, say the 28th, of March, 1878, such as conveying or disposing of real estate to the value of $25,000?

A. Between the two periods of the 28th of March and the time I saw him I can't answer the question.

428 Q. What were his habits as to the use of intoxicating liquors during the last three or four years of his life, if you know?

A. When I knew Mr. Nailor pretty well, he used to take periodical sprees, and he would get crazy and uncontrol-able.

Q. What were his habits, in that particular, when you first knew him?

A. All through my life, from the time I first knew him up to the time of my last visit, he would get on sprees, wander away, and made his wife very unhappy at home. When I was a boy working for him she used to get me and others to go out and look him up, and she sometimes with us.

Cross-examined by Mr. CARRINGTON, Jr.:

Q. You speak of when you were a boy; how many years ago was that?

429 A. I suppose thirty-five or forty years ago. I will be fifty-six years old the 27th of September, next.

Q. At that time in what business was Mr. Nailor engaged?

A. He was keeping a livery stable and running a line of omnibusses from corner of 6th and Penna. Ave. to Georgetown, and I was one of the drivers.

Q. Did you know him when he was a dealer in slaves?

A. I knew him when he was a reputed dealer in slaves. I never knew him to be a dealer in them myself. I never saw him buying or selling them.

Q. In what esteem was he held as a business man by the community?

(Objected to as immaterial.)

A. Many years ago he was looked upon as a very shrewd, keen

430 business man. He was very hard to beat.

Q. I referred in my question as much to his esteem as a moral man as otherwise.

(Objected to as immaterial.)

A. I think he was a very immoral man. As far as the esteem is concerned, some talked in favor of him, others against him.

Q. Was he a man upright and fair in his business dealings, or one who would take advantage of the necessities of others for his own benefit?

(Objection repeated.)

A. Part of that question I can't answer, as to what he wo-ld do with others; but as to myself I don't think I ever had any trouble with him in any transaction, to my knowledge.

JOSEPH H. HILTON.

431 Subscribed and sworn to before me this 13th day of June, A. D. 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until Tuesday next at 2.30 p. m.

Deposition of James Hudson for Complainants. (*Filed Jan.* 13, 1881.)

TUESDAY, *June* 17, 1879.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and Messrs. Rutherford and Carrington, Jr., for defendant; whereupon JAMES HUDSON, a witness of lawful age, produced, sworn, and examined by and in behalf of complainants, deposes as follows:

By Mr. COLE:

Q. Where do you reside?
A. At Mt. Pleasant, in the District of Columbia.
Q. How long have you resided there?
A. Going on five years.
Q. Where did you reside before that?
A. At 1310 E street, for six years.
Q. How long have you resided in Washington or its vicinity?
A. I have resided in Washington about fifteen years. I came here from New York, I think, on the 19th of March, 1864.
Q. Did you know Allison Nailor, Sr., in his lifetime?
A. Yes, sir.
Q. How long did you know him?
A. I should judge about twelve years.
Q. About how intimately did you know him?
A. About as intimate as a man could know him without having any business transactions with him, and seeing him nearly every day.
Q. About how frequently did you talk with him during that time?
A. Very seldom; I could not say how often.
Q. Did you continue to see him frequently, as above mentioned, down until the time of his death?
A. Very frequently.
Q. About how long before his death did you last see and talk with him?
A. I don't know that I had any conversation with him. I met him quite frequently, and saw and spoke with him a short time before his death.
Q. What were his habits as to the use of intoxicating liquors during the time you knew him?
A. I should think he was a very intemperate man; he was so considered.
Q. Did you ever see him intoxicated?
A. For the last few years I don't think I ever saw him that he was not under the influence of liquor. I should judge so.
Q. To what extent, during the last few years of his life, was he generally under the influence of liquor when you saw him?
A. I should think to a considerable extent. It seemed to me always plainly discernible that he had been drinking pretty freely.
Q. Where did you generally see him during the last three or four years of his life?
A. Passing my place of business to and from the stables, and at the stables of Allison and Washington Nailor.
Q. How did his habits, during the last three or four years of his life, in relation to drinking, compare with what they were when you first knew him?
A. I always considered him more or less of a drinking man, but the last three or four years of his life he drank to much greater excess than formerly.

Q. State whether or not you heard him talk with others much during the last three or four years of his life?

A. I have seen him talking with others. I don't know that I heard him say much, except around the stables I have heard
436 him talking a little intimperately.

Q. What was the character of his conversations generally when you heard him talk?

A. I don't know that I can remember.

Q. What was his personal appearance during the last three or four years of his life?

A. He was rather slovenly, I think.

Q. What was the condition of his mind, so far as you could tell from what you saw and knew of him, during the last few years of his life?

A. Very much impaired, I should judge, by excessive drinking.

Q. State whether, in your opinion, Mr. Nailor's mind was in such condition, say in the latter part of March, 1878,
437 as to render him competent to transact understandingly important business, such as conveying or otherwise disposing of real estate to the value of twenty or thirty thousand dollars?

A. I should judge not.

Q. What is your opinion of his competency in that regard, say in the fall, October or November, of the year 1872?

A. For the last eight or nine years I should not consider him competent to transact any business for himself or any one else.

Q. What business or occupation are you now engaged in?

A. In the painting business.

Q. Where is your place of business?

A. 1312 E street northwest.

438 Q. How long have you been located there in business?

A. Since last August.

Q. And where was your place of business before that time?

A. For eleven years previously, next door, No. 1310 E street.

Q. How far is that from the stables, where you say you frequently saw Mr. Nailor?

A. About or rather between two and three hundred yards.

Q. How far is it from where he lived during that time?

A. About four squares, I think.

Q. Did you ever see Mr. Nailor with the defendant, Catharine Conley?

A. No, sir.

Cross-examined by Gen'l RUTHERFORD:

Q. Have you been engaged in any other business except
439 the painting business since you have been in Washington?

A. Not until within the last three or four months.

Q. What business have been engaged in since that time?

A. Contracting and furnishing naval supplies to the Government.

Q. During the last year of Mr. Nailor's life how frequently did you see him?

A. Twice a week, sometimes, and sometimes twice a day.

JAS. HUDSON.

Subscribed and sworn to before me this 17th day of June, A. D. 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

440 *Deposition of James Donaldson for Complainants.* (*Filed Jan. 13, 1881.*)

JAMES DONALDSON, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

Q. Where do you reside?

A. Washington, D. C.

Q. How long have you resided here?

A. This has been my home for fifty-three years. I have lived here off and on. My mother and father have been here.

Q. What is your present occupation?

A. I am crier of the criminal court of this District.

Q. How long have you been so employed?

A. Eight or nine years.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. Yes, sir.

441 Q. How long did you know him?

A. Forty years and more, I think.

Q. Did you have any business transactions with him personally or officially in the last seven or eight years of his life?

A. I have officially.

Q. State when it was.

A. I took two affidavits of men for him once. I didn't have much to say to him. The men came, and I took their affidavits at my office.

Q. Any other?

A. Yes. I sued him for Wall once in 1873. I didn't bring the date down. My docket will show.

Q. What official position did you hold then?

A. I was justice of the peace for this District.

Q. Did you see Mr. Nailor on that occasion?

A. I did.

442 Q. More than once?

A. No. I think I had more to say to him then than I have had for the last fifteen or twenty years, perhaps.

Q. Did he come to your office in response to the suit?

A. Yes; he came there in response to a summons.

Q. What condition was he in at that time, mentally and physically?

A. Well, he went on, cried, and hallowed; raised an excitement there almost; raised a crowd of people before the door.

Q. Do you mean to say that he shed tears or cried aloud?
A. Oh, shed tears—cried like a baby.
Q. What did he say on that occasion, if anything?
A. He appeared to think he was persecuted—that everybody was robbing him.

443 Q. How long was he in your office?

A. A good while before I could get rid of him. I dismissed the suit.
Q. Did you try and dismiss it on the merits?
A. I dismissed the suit because he went on and raised a rumpus.
Q. Was he sworn as a witness on that occasion?
A. I don't think he was.
Q. Did you investigate the merits of the case?
A. No, sir; I got disgusted with him and dismissed the suit.
Q. How often had you seen Mr. Nailor prior to that time?
A. Not to speak to him, but very few times. A long time intervened. I was thrown out of sight of him. I would see him going along the street sometime-.

444 Q. What seemed to be the condition of his health at that time?

A. He appeared to be in poor health when he was at my office. He appeared to be a wreck of his former self years ago when I knew him. He was then a very shrewd business man.
Q. How long ago was that when you say he was a very shrewd business man?
A. Thirty years ago.
Q. How well did you know him at that time?
A. Intimate with him.
Q. At the time he was at your office in 1873 state whether, in your opinion, his mind and health was in such a condition as to render him competent to understandingly transact important busi-
445 ness or to make a disposition of his property.

A. I couldn't say that. His actions and ways impressed me that his mind was pretty well gone from what it was when I knew him in former days. That's about all I can say. In latter years I have seen very little of him. I may have seen him on the street. I saw him riding in a buggy with a woman; do not know who she was.

JAMES DONALDSON.

Subscribed and sworn to before me this 17th day of June, 1879.
IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned to meet on Thursday next at 2 o'clock p. m.

446 *Deposition of Andrew J. Joyce for Complainants.* (*Filed Jan.* 13, 1881.)

THURSDAY, *June* 19*th*—2 o'clock p. m.

Met pursuant to adjournment.
Present: C. C. Cole, Esq., of counsel for complainants, and Messrs. Rutherford and Thompson, of counsel for defendant, and the wit-

ness, ANDREW J. JOYCE; whereupon the latter, being produced and sworn as a witness in behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is Andrew J. Joyce; I reside on 11th street near M, in this city, and am a carriage builder.

Q. How long have you resided in Washington?

A. Since 1836.

447 Q. What is your present occupation?

A. Carriage and wagon manufacturer.

Q. Did you know Allison Nailor, senior, in his lifetime?

A. Yes, sir.

Q. How long did you know him?

A. I think from 1836 or 1837 until he died.

Q. How intimately did you know him?

A. Pretty well. I was an apprentice at that time, and in the year 1843, I did work for him.

Q. How intimately did you know him the latter part of his life, say from 1870 on?

A. I did not know him intimately.

Q. About how frequently did you see him during the last seven or eight years of his life?

A. I saw him frequently during that time.

448 Q. What business was he engaged in the last seven or eight years of his life?

A. None, to my knowledge.

Q. From about what time did he cease to engage in business?

A. To the best of my knowledge about nine or ten years ago. It may have been longer.

Q. What was his appearance and condition the last few years of his life?

A. From appearance I should think that he was unfit for business.

Q. How frequently, if at all, did you talk with him, or hear him talk with others, during the last three or four years of his life?

A. I don't think I talked with him over two or three times. I think I heard him once talking to his son Wash.

449 Q. Did you see him in the spring of 1878?

A. Yes, sir.

Q. From his appearance and condition at that time, state whether, in your opinion, he was competent, say in the spring of 1878, to transact, understandingly, important business, such as conveying large quantities of real estate?

A. I say, no, sir.

Q. When did you last see Mr. Nailor?

A. A short time before he died; I cannot give the date.

Q. During the spring of 1878, when you saw him, what was the condition of his health?

A. To the best of my knowledge and belief, I think he was very infirm.

Q. Did you see him walk or move about much during that spring?

450 A. The distance he moved was short, but frequently—I mean from day to day.

Q. How did he walk, as if he was strong and vigorous, or otherwise?

A. Very weakly.

Q. Do you remember of talking with him or hearing him talk during that spring?

A. I do not.

Q. During the spring of 1878 how did his movements, actions, and appearances correspond or compare with what they were in former years, say ten or twelve years before that time?

A. The difference between a well man and a dilapidated man was shown.

Q. What was Mr. Nailor's condition, say in the fall of 1878?

451 A. I cannot recollect; I think that for the last eight or nine years he has been in pretty much the same condition, but not so weakly as towards the last.

Q. About how long ago should you say that he became incompetent to transact business understandingly.

A. I should myself have been very careful in transacting business with him during the last six or seven years before he died.

Q. Do you remember about how long ago he went to live with the defendant, Kate Conley?

A. I should think about eight or nine years ago.

Certificate of Examiners in Chancery to Volume Two.

In the Supreme Court of the District of Columbia. Equity.

452 RACHEL D. NAILOR *et al.* *vs.* CATHARINE CONLEY *et al.* } No. 6658.

We, Arthur Browning and Irving Williamson, examiners in chancery of the supreme court of the District of Columbia, do hereby certify that the annexed depositions included in vol. 2, being from page 230 to page 467, both inclusive, were reduced to writing by us, respectively, in the presence of the witnesses therein named, and in the presence of the counsel for the complainants and defendants, the said witnesses having been first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matter in controversy in the above-styled suit.

ARTHUR BROWNING, [SEAL.]
Examiner in Chancery.
IRVING WILLIAMSON,
Examiner in Chancery.

453 Cross-examination by Mr. RUTHERFORD:

I never was a personal, intimate friend of Mr. Allison Nailor, senior.

Q. How do you know that he transacted no business during the last seven or eight years of his life?

A. I did not say that he did not, and I don't know that he did.

Q. On the occasion that you saw him, during the last seven or eight years of his life, upon what subjects would you generally converse?

A. Merely pass the time of day, and it would be very short.

Q. And yet, upon these short conversations, you express an opinion that Mr. Nailor was not competent to transact business. Please explain your reasons for forming such opinion.

454 A. My opinion is this: From his condition and appearance in late years, and the difference between his appearance and what it was in years previous.

ANDREW J. JOYCE.

Subscribed and sworn to before me this 19th day of June, A. D. 1879.

A. BROWNING,
Examiner.

Deposition of Lewis M. Graves for Complainants. (*Filed Jan.* 13, 1881.)

LEWIS M. GRAVES, being produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is Louis M. Graves. I reside at present on Congress street, in Georgetown, D. C.

455 Q. How long have you lived in *in* Georgetown and Washington?

A. Nineteen years.

Q. What is your present occupation?

A. I am out of employment now.

Q. Did you know Allison Nailor, senior, in his lifetime?

A. Yes, sir; I knew him for several years.

Q. When did you first know him?

A. About twelve years ago.

Q. About how intimately did you know him from that time until the time of his death?

A. I knew him well enough to speak to him when I met him on the street. He was always very friendly with me up to 1874. In the fall of 1874 I was appointed by Mr. George W. Phillips as deputy sequestrator, and from that time until 1877 I had charge of
456 his property and collected the rents. This was in the suit of Mrs. Nailor against Mr. Nailor.

Q. How often did you see Mr. Nailor during the time you had charge of his estate in the capacity you have mentioned?

A. I saw him often when I went to collect rents or to look after the property?

Q. What was his condition and appearance on those occasions when you met him?

A. It was very bad; the times I met him I believe he was very much under the influence of liquor. My reasons for thinking so are because he was abusive, and he called me a hot-livered son of a bitch, and said George Phillips was a God-damned thief, and was trying to rob him, and that he would have us both in the penitentiary before he got through with us.

457 Q. About how often during that time did you see him intoxicated?

A. Every time I met him below the avenue among his tenants he appeared to be in the same condition.

Q. What attempts, if any, did he make to interfere with you in the discharge of your duties as sequestrator?

A. All I could say is what the tenants told me; that is all.

Q. Did you ever see the defendant, Catharine Conley, during the time you were acting in the capacity aforesaid?

A. Yes, sir; both at the house on 14th street and in a carriage with Mr. Nailor.

Q. How often did you see them together during the time you acted as aforesaid?

A. A very few times, but not very often.

458 Q. What influence, if any, did she appear to exert over him?

A. I could not say. I was not intimate enough with him to know, and had no chance of judging.

Q. What was the condition of Mr. Nailor's health during the time aforesaid?

A. When I saw him he appeared to be crazed by liquor, and for that reason I paid no attention to what he said.

Q. What was the condition of his mind?

A. He talked like a drunken man, as if he did not know what he was talking about.

Q. State whether, in your opinion, during the time that you had charge of the estate, he was competent to understandingly transact important business, such as conveying or disposing of

459 real estate?

A. At the times I saw him I don't think he was; further than that I can't say.

Q. How much did you see of Mr. Nailor after you ceased to be deputy sequestrator?

A. Very little. I seldom met him.

Q. Would you be able to state whether he continued in the same condition, or improved or grew worse down to the time of his death?

A. I cannot say but that I met him once after that; knowing that he disliked me, I avoided him as much as possible.

Q. Did you ever hear him speak of Catharine Conley?

A. I don't know that I ever did but once, and I cannot locate that time. It was while I was sequestrator.

Q. Do you remember what he said on that occasion?

460 (Any conversation between witness and Mr. Nailor objected to by def't.)

A. It was in Burke's store, corner of 13½ and D streets. He was cursing about his son, Allison. He said Allison would be glad to see Kate Conley dead. He was talking to an old man in Burke's store. He also said that Kate Conley was the only one that ever took care of him, and that he intended to take care of her in spite of those sons of bitches, and that they would get enough of him before they got through with it. That is the only time I ever heard him mention her name.

Q. What was Mr. Nailor's condition during the time you had charge of the estate as compared with what it was when you first knew him?

461 A. When I first knew him he appeared to be very gentlemanly to me and spoke kindly to me, but when I took charge of the estate he appeared to be just the reverse and constantly under the influence of liquor.

L. M. GRAVES.

Subscribed and sworn to before me this 19th of June, 1879.

A. BROWNING,
Examiner.

Adjourned until Monday, June 22d, 1879, at 2 o'clock p. m.

Deposition of Theodore W. Hilleary for Complainants. (*Filed Jan.* 13, 1881.)

462 MONDAY, *August 25th*, 1879—1 o'clock p. m.

Met pursuant to agreement of counsel.

Present: Counsel on either side and witnesses, whereupon THEODORE W. HILLEARY, a witness produced and sworn on behalf of complainant, did depose and say as follows:

By Mr. COLE:

My name is Theodore W. Hilleary; I reside at the corner of S and 13th street in this city; I am a plumber.

Q. How long have you resided in Washington?

A. Fifty-four years. I was born here.

Q. How long have you been engaged in the plumbing business?

A. Almost eighteen years.

Q. Did you know Allison Nailor, senior, in his lifetime?

463 A. Yes, sir.

Q. About how long did you know him?

A. About twenty-five years.

Q. Did you know him up until the time of his death?

A. Yes, sir.

Q. About how intimately did you know him?

A. I had dealings with him five or six months before he died. I used to do all his plumbing work for him for the last fifteen years. He owned quite a number of houses in town, and I got a job occasionally from him.

Q. Did you or not see Mr. Nailor frequently during the last fifteen years of his life?

A. I saw him frequently during that time.

Q. What were his habits during the last seven or eight years of his life?

464 A. When I would see him he would be around taverns drinking, and almost always under the influence of liquor.

Q. During that time was he or not generally intoxicated when you saw him?

A. He had always been drinking.

Q. When did you do the last work for him in your line, and where?

A. On 12th street, south of the avenue; some time last fall.

Q. Who lived in the house at the time?

A. Nobody.

Q. Who lived there afterwards?

A. He moved there, and the woman he kept.

Q. Who was the woman?

A. The one he kept. The darkies around there called her Mrs. Nailor. I knew that she was not his wife.

465 Q. Who lives in the house now?

A. I do not know. I have not been there since I did the work. I know it is the same house Mr. Nailor afterwards died in.

Q. Who employed you to do that work?

A. Mr. Nailor himself.

Q. Who paid you?

A. Mr. Nailor.

Q. How much did it amount to?

A. $90.00.

Q. Did you get your pay all down when the work was done?

A. No, sir; at different times.

Q. How often did you go to Mr. Nailor for the pay before you got it all?

A. About six or seven times.

Q. What conversations, if any, did you have with him on those occasions?

(All conversations between witness and the deceased, Allison Nailor, senior, objected to by def't.)

466 A. When I asked for my money he always said he was sick and unable to attend to business.

Q. What was his condition on those occasions?

A. He would always be sitting down and complaining that he was unable to attend to any business, and would tell me to call again.

Q. When did you do the last work for Mr. Nailor before the job just mentioned?

A. It was on a house on 14th street he was living in at the time, on the Island. He moved from there to 12th street. I suppose it has been about four years ago, or it may have been more. I am unable to say.

Q. Who, if anybody, was living in that house with him at the time?

467 A. There was a woman there; the same woman that lived on 12th street with him.

Q. Who employed you and paid you for doing the work on 14th street?

A. Mr. Nailor.

Q. Were you well acquainted with Mr. Nailor in the spring of the year 1878?

A. Yes, sir.

Q. Were you well acquainted with him in the fall of 1872?

A. Yes, sir.

Q. State whether, in your opinion, Mr. Nailor was competent in the fall of 1872 or in the spring of 1878 to understandingly convey or dispose of large quantities of his real estate?

A. I don't think that he was at times.

Cross-examination by Mr. THOMPSON:

468 Q. You have testified that in the fall of 1878 that you made an agreement with Mr. Nailor to do the plumbing work in a house on 12th street; did you make any agreement with him?

A. Yes, sir.

Q. In what condition did you find Mr. Nailor at that time with regard to his ability to take care of his property?

A. I found him as I usually had seen him. He had been drinking, but he made the bargain with me.

Q. Then you admit that in 1878 he was able to make this agreemeent with you?

A. He might have been able to tell me to go ahead with it; he was responsible enough.

Q. Is it a usual thing with you in your business to make contracts and agreements with parties incompetent to contract?

(Objected to by compl't as incompetent.)

469 A. It is my business to make a contract and get work from any one that is responsible.

Q. You say you called five or six times before you got your pay from Mr. Naylor, and he told you that he was unable to attend to business and to call again. You did not believe that, did you?

(Same objection as above.)

A. I believed that he was not able to attend to it.

Q. You finally got your money, did you not?

A. Yes, sir.

Q. Now, don't you think, notwithstanding your testimony, that from the fact of his entering into this contract with you, and he finally paying for it, that it shows him to have been competent to take care of his property?

A. I don't know whether he was competent to take care of his property or not, but I don't believe that he was competent at times.

470 Q. You have sworn that in the spring of 1878 and the fall of 1872 that you did not think Mr. Nailor was competent to

dispose of his property. You modified that by saying at times you did not consider him competent to do so. Now, state to what particular times you refer?

(Objected to by compl't, because the witness has not modified his testimony-in-chief as stated in the question, his testimony-in-chief being that he did not consider Mr. Nailor competent in the fall of 1872 and the spring of 1878 "to convey or dispose of" large quantities of his real estate, while his testimony on cross-examination was that he did not think he was competent of "taking care of" his property at times; and counsel for complainant suggests
471 that there is a vast difference between conveying and disposing of property and taking care of it.)

(Counsel for defendant says that he reserves his argument for the court.)

A. He was drinking at the times I saw him, and those are the times to which I refer.

T. W. HILLEARY.

Subscribed and sworn to before me this 25th day of August, 1879.

Deposition of Notley Nailor for Complainant. (*Filed Jan.* 13, 1881.)

NOTLEY NAILOR, a witness produced and sworn on behalf
472 of the complainants, did depose and say as follows:

By Mr. COLE:

My name is Notley Nailor; I reside in Washington, D. C.; I am in the livery-stable business; I am a nephew of the late Allison Nailor, senior; I am son of his brother; I knew Allison Nailor in his lifetime; I knew him all my life up to the time of his death; I am thirty years old; I knew my uncle pretty intimately; I saw him frequently after he left his home and went to live with Kate Conley; I have often carried him home to his family intoxicated before he left there for good.

Adjourned until Wednesday, August 27th, at 1 o'clock.

A. BROWNING,
Examiner.

473 AUGUST 28, 1879.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., counsel for complainants, and Mr. Carrington, Jr., counsel for defendant.

Owing to the sickness of Examiner Browning the taking of testimony is continued by consent of counsel before the undersigned; whereupon NOTLEY NAILOR, a witness of lawful age produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

I have resided nearly all my life in Washington, and will be thirty years of age next September. I knew Allison Nailor, Sr., all my life, and was very well acquainted with him. He was
474 my uncle, and I continued to know him up to the time of his death, meeting him very often. He was greatly addicted to drink; he drank to intoxication. I have carried him home drunk, and have seen him drunk many a time. After he left home I did not see him drunk often, not being in that neighborhood, but I heard of it frequently. I saw him every day before he left home. Before he left home he used to get on occasional sprees. Before and at the time he left home I don't think he was engaged in any business. He used to do business at a time when they were engaged in buying corporation scrip with Mr. Clark. I couldn't say
475 when this was. After he left home he used to come to my place of business quite often, and I would see him. Sometimes on seeing him coming I would hide, because he had been drinking and would talk so much about family matters.

Q. On the occasions you heard him talk about family matters what did he say?

(Objected to by Mr. Carrington.)

A. He used to abuse and curse first one of his family and then the others. I have heard him talk in that way a number of times. After he left home I saw him riding in company with this woman, and I also saw him on the street alone. I saw him at the window of her house on 14th street. On these occasions when I saw
476 him sometimes he was under the influence of liquor and at others I couldn't say whether he was or not. Towards the last of his life he wasn't the man he used to be in former years; he had failed very much, and appeared childish to me.

Q. State whether, in your opinion, Mr. Nailor was competent, say in the spring of 1878, to make deeds for and convey large quantities of his real estate.

A. I don't think he was.

Q. State whether, in your opinion, he was competent to do so in the fall of 1872.

A. I don't think he was.

Cross-examined by Mr. CARRINGTON:

I am engaged in the livery business with my father. I think Mr. Nailor left his home before 1872. I am positive he was away
477 from home before September, 1872, because I had the typhoid fever at that time, and was sick for five or six weeks. I couldn't state the time he left to live in Montgomery county. I couldn't come in three or four years of it. I think he stopped carrying on business about 1869; it might be before; couldn't say exactly. He just attended to his property, and made a dollar wherever he got a chance, I suppose. He — up the omnibus and livery business, I guess, before the war. I know he used to buy and sell mules dur-

ing the war. After he got through with these he carried one no particular business; he attended to his property. I have collected rent for him. He used to send me to get it. In March,
478 1878, I couldn't say how often I saw him; I couldn't name the month. I couldn't say how often I saw him in April, 1878, or whether I saw him at all in that month. I couldn't say how many times I saw him in May, 1878, if at all. I couldn't say whether I saw him, or the number of times I saw him, in November, 1872; I may have seen him. For the three months commencing March 1 and ending June 1, 1878, I couldn't say how often I saw him intoxicated. I frequently heard of his being intoxicated, but whether during that period or not I cannot say. I can repeat conversations I had with Mr. Nailor in reference to family matters during the last year of his life.

NOTTEY NAILOR.

Subscribed and sworn to before me this 28th day of August, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

479 *Deposition of E. F. Farrar for Complainant-.* (*Filed Jan.* 13, 1881.)

E. F. FARRAR, a witness of lawful age, produced, sworn, and examined in behalf of complainants, deposes as follows:

By Mr. COLE:

I reside in Washington, and have for about thirty-eight years; I am a member of the Metropolitan police force; before that I was in the carriage business; I knew Allison Nailor, Sr., all my life; during the last fourteen years of his life I knew him intimately; I knew him as well after he left home as I did before; during the last two years I would see him on an average once a week; about three years ago I tried to rent a shop from him; I never
480 could get him to do anything; I would make a bargain with him one day, and the next day he would seem to have forgotten all about it; at last he referred me to his son-in-law, Mr. Clark; during the last two or three years every time we would meet we would have a little conversation; his condition was that sometimes I saw him pretty drunk and sometimes sober; I have conversed with him on these occasions when he seemed to be sober; we talked about anything we thought about; sometimes he spoke of his family troubles, talked right smart about them; he would seem to be first down on one and then the other of his family; this was about his children; I never heard him say much about
481 his wife; in the year 1878, three or four weeks before he died, I conversed with him about politics or improvements or something of that sort; I don't remember any exact time in March, 1878, but every week or two during that spring I would meet him; towards the last of his life I noticed he couldn't stick to

any one subject; he would fly from one thing to another; if he promised you a thing one day the next he would have forgotten all about it; he forgot conversations very soon.

Q. From your associations and conversations with Mr. Nailor what, in your opinion, was the condition of his mind and health, say in the spring of the year 1878?

482 A. His health was very poor; he was always complaining every time I met him; he would say he was very poorly; I don't think his mind was altogether right; I didn't think it was for several years before; it appeared to be very weak.

Q. State whether, in your opinion, Mr. Nailor was competent, in the latter part of March, 1878, to understandingly make deeds for and convey large and valuable portions of his real estate.

A. I don't think he was.

Q. How long, in your opinion, did his inability to do so exist before his death?

A. I don't think he was competent at times, when drinking, for the last ten or twelve years. I remember nothing special in relation to him in the fall of 1872.

EDWARD T. FARRAR.

Subscribed and sworn to before me this 28th day of August, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

483 Adjourned until Monday, Sept. 8th, 1879, at 1 p. m.

Deposition of Edward Crusor for Complainant-. (*Filed Jan.* 13, 1881.)

MONDAY, *September 8th*, 1879.

Met pursuant to adjournment.

Present: Counsel on either side and witnesses; whereupon EDWARD CRUSOR, a witness produced on behalf of compl'ts, being duly sworn, did depose and say as follows:

By Mr. COLE:

My name is Edward Crusor. I reside in Washington, D. C. I am a real estate agent.

Q. How long have you resided in Washington?

484 A. Fifty-odd years. I have known Allison Nailor, Sr., for the last twenty-five years at least, and known him almost as well as I did any of my own relatives. We did business together. I used to sell him feed. About six months before his death I talked with him about his then condition, and comparing that with my early acquaintance with him, and I talked freely with him about his way of living. (Objected to generally by def't.) I told him that when I first knew him he was a sober man, and temperate in all his habits, and upright in business, and then reproved him by telling him he had gone down to a very low ditch of humanity. He then said that it was very rarely that he ever drew a

sober breath, and admitted that he was incompetent to be the
485 same business man that he had formerly been. I then charged him with having left his home, and being the father of other children. He denied having children by any other woman than by his lawful wife, then living on 13th street near G street. During the last year of his life I saw him nearly every week, I being around the stables of his sons very often, and whenever I saw him he seemed to be under the influence of liquor, or else he was just getting over a drunk. He told me that he was unable by reason of his course of living to attend to business. I could not tell the month that he told me that, but it was about six months before his death.
486 Whenever I met him he always talked about his course of life. We were very intimate. The last two or three years of his life, and especially the last year, he seemed to be under the influence of liquor every time that I saw him, and he certainly looked wretched. In my conversations with him during the last years of his life he seemed to be stupid, and flatly refussd to talk about the future. He admitted that he was incompetent to transact business, but denied again and again that he had any children except by his lawful wife. From the way he acted I should judge that one-half the time he did not know what he was doing. My opinion
487 is that he was incompetent in the spring of 1878 to make deeds or convey large quantities of his real estate, and I feel confident that he was not competent to do so at that time. I do not know as to his competency to convey real estate in the fall of 1872, as I did not then know so much about him.

Cross-examination by Gen'l RUTHERFORD:

I am now trying to deal in real estate. I have also been in the feed business during the past twenty-five years. When I first knew Mr. Nailor he was a smart and active business man. I don't remember the date of the last business transaction I had with him, but it was about fifteen years ago. When I conversed with him
488 about his mode of life he said that he felt that he had degraded himself. I often saw him at the stables and on the streets during the last year of his life, and he always stopped and talked to me. I formed my conclusions as to his incompetency because he was nearly always under the influence of whiskey, and was very forgetful and unable to remember.

EDWARD CRUSOR.

Subscribed and sworn to before me this 8th day of September, A. D. 1879.

A. BROWNING,
Examiner.

Deposition of William E. Darcey for Complainants. (*Filed Jan.* 13, 1881.)

489 WILLIAM E. DARCEY, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is William E. Darcey; I reside in Montgomery county, Maryland, about two miles from Tennallytown, D. C. I am by occupation a farmer. I resided in Montgomery county about twenty-six years. I knew Allison Nailor, senior, the last twenty-five or thirty years of his life, and towards the last fifteen years I knew him pretty well. Since 1859, when I rented a place from him, I have known him well. In 1858 I bought a little house and lot from him, and four or five years afterwards I bought another
490 lot from him. I have had no more business relations with him since then except buying wood from him off of his farm. In 1859 I rented a place called "McKubbin's" place, which he sold to Henry Burch while I was on it. I only had it one year, 1859. The last three or five years of Mr. Nailor's life I saw him very frequently. He came out to the farm often, and he always stopped at the house to see me, as he had asked me to keep an eye on his farm property after he left there. He lived in Montgomery county in 1859, but I don't know how long before or since that he lived there. While he lived on the farm he would sometimes go on a spree, but not
491 often; sometimes two or three times a year, and sometimes it may be not for a whole year. After he moved in town he became more and more intemperate during latter years, and I only saw him sober once, and that was at his house on 14th street, on the Island. His sprees became much more frequent than when he lived in the country. At other times when I saw him in town he was always under the influence of liquor, and generally had a vial or bottle of whiskey with him. I have often seen him in company with the Conley woman, as he frequently brought her out to his farm. On Friday before last Christmas I saw him going to his farm in
492 company with Kate Conley, and he was drunk on that occasion. He was always drunk when I saw him out to the farm with her, and I have often helped him in his buggy when he started to come home. Nearly every time he came out to the farm towards the last of his life he would stop at the house and say to me that he wanted to see me, and we would then have a talk. This was during the last five or six years of his life. On those occasions he would talk about different things, sometimes about his family, and nearly always he would ask me if I would not make room to board him, and I always told him that I was not fixed up for him. He seemed to be in earnest, and gave as a reason that his mind was so
493 troubled that he thought he would live ten years longer if he got into the country, and that he thought his children and all his family had gotten down on him because he had car ied on so during the past few years, and he desired to get in the country and try to do better, as he was tired of that way of living.

Q. From your conversations with him during the last four or five years of his life, what seemed to be uppermost in his mind or running in or praying upon his mind?

A. It appears that his mind was bothered about his family difficulties.

(Objected to by def't generally.)

Q. During the last four or five years of his life, what was the condition of his mind?

494 A. I think it was pretty bad. He could not remember what he was doing. I have many a time seen him break off a weed or straw out on the farm, and try to strike a light with it to light his pipe with.

Q. State how his memory was.

A. He could not recollect anything much. I have told him about people taking wood from the farm, and he said he would see about it, and the next time he came out he would ask me if any persons had been committing depredations on the farm.

Q. State whether or not in your conversations with him he seemed to desire to change his condition or mode of living and to return and become reconciled to his family?

495 A. He often said that he would go home, but received no encouragement, as no one would ask him to come home, and then he would cry.

Q. During the last ten years of his life, what was his mental and physical condition, as compared to what it was in 1859, when you rented the farm from him?

A. It was quite different; when I rented the farm from him he was a business man, but towards the last he was greatly changed, and there was no business in him at all.

Q. Do you remember of seeing him about the last of March or first of April, 1878.

496 A. Somewhere about that time I did, but cannot give the date. He came by my house, coming from Rockville, in company with Kate Conley and one or two children. He was drunk at that time, and I did not talk with him, except that he told me that he had been to Rockville on that day, but did not say for what purpose.

Q. In your opinion, was he competent on that day to transact business?

A. I should say not.

Q. State whether, in your opinion, he was competent during the month of March or April, 1878, to understandingly sell, transfer, or convey large quantities of his real estate, say of the value of $20,000 or more.

A. I don't think he was; I know he was not at the times I saw him.

Q. What is your opinion of his competency, in that regard, in the fall of 1872?

497 A. I found no difference in the last seven or eight years before he died. I think he was incompetent during all of that

time. I don't think he was engaged in any business during the last ten years before he died. A few days after I saw him coming from Rockville I again saw him, and he told me that he went there for the purpose of transferring a little property.

his
WILLIAM E. x DARCEY.
mark.

Witness:
A. BROWNING.

Subscribed and sworn to before me this 8th day of September, A. D. 1879.

A. BROWNING,
Examiner.

Adjourned until Wednesday, September 10th, 1879, at 7 o'clock p. m.

Further adjourned until Thursday, Sept. 11th, at 7 o'clock p. m.

498 *Deposition of John P. Dennis for Complainants.* (*Filed Jan.* 13, 1881.)

THURSDAY, *Sept* 11*th*, 1879.

Met pursuant to adjournment.

Present counsel on either side and witnesses; whereupon JOHN P. DENNIS was produced and sworn on behalf of complainants, and testified as follows:

By Mr. COLE:

My name is John P. Cennis; I reside in this city and am a sanitary inspector for the District of Columbia. I have lived here for twenty-eight years, and I have known Mr. Allison Nailor, Sr., about twenty-five years; I rented a shop from him once, and knew him very well, and saw him often. It was about twelve (12) years ago that I rented from him, and I rented from him about
499 two years; I lost sight of him until about a year or a year and a half ago. When I rented from him I considered him a very smart and shrewd business man. I met him afterwards a year and a half ago, and he always talked at random and seemed to be always under the influence of liquor, and this woman appeared to have control over him—I mean the woman who was living with him on 14th street northwest. I went to see him on 14th street, in the capacity as sanitary officer, about one year ago, and that was the last time I saw him; and stopped and talked with him several times during the spring of 1878, and he appeared
500 very much depressed, discouraged, and despondent, and wandered in his conversation, and he also looked as though he was indulging very freely in the use of intoxicating liquor. At the time I called on him in relation to a nuisance on his property he quarreled with me, but the woman he was living with advised him desist, and she afterwards abated the nuisance. He said he owned the property, and she said that she owned it. On that occasion he

quarreled with me, but finally, under her advices he acquiesced in what she said and the nuisance was abated. I saw him and talked with him once or twice in the spring of 1878. I met him twice over at the 14th St. house on business.

501 Q. State whether, in your opinion, Mr. Nailor was competent at the time you saw him at the house on 14th street, or on the occasions when you saw him in the spring of 1878, to understandingly transfer or convey his real estate.

A. I should not consider him a competent man to transact business.

Q. State whether, in your opinion, from what you saw of him in the presence of the woman he lived with, she had an undue or unusual influence over him, or a greater influence than any other person seemed to have?

A. She quested him in his loud talking.

Q. How was that boisterous talking; state whether it was like Mr. Nailor was twelve years ago; whether it was manly and

502 rational or weak and childish?

A. Twelve years ago he would not use such language as that, and it was not manly.

Cross-examination by Mr. CARRINGTON:

I could not repeat the conversation I had with Mr. Nailor when I called at his house on 14th street in relation to the abatement of the nuisance. He abused Mr. Shepherd and the Commissioners, and said that they had ruined him, and he talked about so many different matters that I cannot remember what he said. I only talked with him a very short time, and he did not discuss any other subject. I was with him, I suppose, about ten minutes. The

503 abuse of the Commissioners is a very common thing. Once when I saw him, in the spring of 1878, he was in a buggy and hailed me and talked to me, and said he was very poorly and feeling badly, and we passed the compliments of the day, and he generally said when I met him that he was "played out." I have had no business transactions with Mr. Nailor for the past seven or eight years.

Redirect by Mr. COLE:

When he called me from his buggy I was on the sidewalk and he was in the street in the buggy, and he stopped his horse and called me, but had no special business with me.

JOHN P. DENNIS.

Subscribed and sworn to before me this 11th day of September, A. D. 1879.

A. BROWNING,
Examiner.

504 *Deposition of Washington S. Hurley for Complainants.* (*Filed Jan.* 13, 1881.)

WASHINGTON S. HURLEY, a witness produced on behalf of complainants and being duly sworn, did depose and say as follows:

By Mr. COLE:

My name is Washington S. Hurley. I reside in Washington D. C., and have been a lieutenant of police, and was in that position for about eighteen years, and resigned in November, 1878. I knew Mr. Allison Nailor since 1837. I worked for him about eight years. I knew him pretty well. I left him in 1845 and went to Baltimore and saw him quite often there, as he always called on
505 me when he came there. I returned here in 1853 and saw Mr. Nailor frequently up to the time he died. I know of his leaving his home and going to live with the Conley woman. I saw him occasionally, perhaps once a week, during the last seven or eight years of his life. Whenever he saw me he always called me and talked with me, and I saw him and talked with him about once in every ten days during the last year of his life. When I went to work for Mr. Nailor in 1837 he was one of the smartest business men I ever saw, but for the last ten years he has been very different. About a year ago he drove up to the station-house on "K" between 20th and 21st streets, where I was stationed. He called me and asked
506 me if I knew where Bean was. (Bean lived at that time on one of his farms.) I pointed out Bean; says I, "there is Bean." Bean came to him and they had some conversation about eggs. He spoke about losing his little boy "Willie" and said he was very much worried about it. The last two or three years of his life Mr. Nailor looked to me as though he was under the influence of liquor the most of the time, and appeared to be very dull and stupid and continually complained of being unwell and very poor. Some seven or eight years ago he commenced to go down and lost his self-respect. There was a great change in him, but I cannot say whether it was sudden or gradual. When I talked with him
507 the latter part of his life he always talked of his poverty and his troubles. I have seen him in a buggy with the Conley woman.

Q. State whether in your opinion Mr. Nailor was competent to make deeds or transfers of his real estate in the spring of 1878?

A. I was not familiar enough with him to state that. I know that he was a very much changed man.

W. S. HURLEY.

Subscribed and sworn to before me this 11th day of September, A. D. 1879.

A. BROWNING,
Examiner.

Adjourned until Friday, Sept. 12th, 1879, at 3 o'clock p. m.

A. BROWNING,
Examiner.

508 *Deposition of William H. Bennett for Complainants.* (*Filed Jan. 13, 1881.*)

SEPTEMBER 12*th*, 1879.

Met pursuant to agreement of counsel to take testimony in behalf of complainants.

Present: C. C. Cole, Esq., counsel for complainants, and Gen'l Allen Rutherford for defendant; whereupon WILLIAM H. BENNETT, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

I am a resident of Washington, D. C., living at 505 E street northwest, and I am by occupation a constable and collector, and have been since July, 1878. I had been constable before that for
509 six or seven years, along in 1866. I knew Allison Nailor, Sr., well. My first acquaintance with him commenced in latter part of 1862 and continued until his death. I knew him intimately and had business with him, and would see him two or three times a month and oftener than that. I have seen him often at the livery stable. I did not see him so often after he left his home and lived on the Island. During this time I saw him once or twice a month. I talked with him frequently; would stop and ask how he was, and he would tell me his troubles. I have sued him for different parties for money. This was somewhere along in 1866, when I was constable, and my official business
510 continued with him until along in 1870, and then again from July, 1878, up to the time of his death; I had official business with him only once since July, 1878; I couldn't fix the date except from Squire Walter's docket; it was when Wash. Nailor commenced to build his stable, some time in the summer or fall of 1878; it was a *scire facias*, and I served it on him after going to his house five or six times; Kate Conley would not let me see him; I saw her every time I went to the house; she said sometimes that he was sick, and sometimes that he was in bed; she didn't want me to see him, although I told her I only wanted a few minutes' conversa-
511 tion with him; finally I found him on E street after watching for him; I had a conversation with him at that time and on several other occasions; I was pretty intimate with him.

I met him one day nearly in front of the City Hall after I served the *scire facias*; I saw for the last three or four years that he had all gone to pieces; that his mind was not right, and felt a sympathy for him, and spoke to him in these words: I said, Mr. Nailor why don't you give up this mode of living; you have but a few moons to live; give up that old hussy, and go back to your lawful wife. His reply was that he had no peace at his home; that they were
512 all trying to get his property away from him, and that was the reason he took up with this woman. I said I suppose you can't get drunk at home as you can down there and raise the devil. He said where he was he could always get plenty of whiskey and things to suit him. I have had similar conversations with

him about his family difficulties; I told him he had brought them all on himself; he never expressed any regret, except to say that if things had gone on smoothly he wouldn't have been where he was; I remember seeing him every once in awhile during the spring of 1878; sometimes I talked with him, but he was not companionable, and sometimes seemed not to understand what he was
513 doing. During the spring of 1878 he was a poor old broken-down man, almost what I would term an imbecile. I have been an officer for a number of years, and have had considerable experience with such men. When I served the *scire facias* on him I thought it was a shame, and he never paid any attention to it. For five or six years he was not competent to attend to any business. [I would not have bought any property from him without I had the sanction of Mrs. Nailor and his sons; indeed, I don't know that I would have done it then, because I would not consider the deed valid.]

Part in brackets objected to by Gen'l Rutherford.

514 In the spring of 1878 he was a very different man from what he was in 1862. I could hardly state the comparison, there was such a change. Towards the last of his life he would start one subject, and then before completing what he was saying would fly to another subject. For instance, I would say, Good morning, Mr. Nailor. He would say, Good morning; I am very poorly; health bad, weak, tremulous, just like a man getting over a spree. Then he would go on and speak of his troubles, saying every one was trying to rob him; that his property was going to the devil. I would meet him one time and he would praise Wash. up and run Ally down, and a day or two after he would curse Ally and
515 praise up Wash. I never saw him in the presence of the Conley woman; she wouldn't let me, although I tried. Every time I saw him he was under the influence of liquor. The last time I was at the house I asked Miss Conley who she was, and by what autherity she refused to let me see him? She said her name was Conley, and that he was sick upstairs.

Cross-examination by Gen'l RUTHERFORD:

Q. In your examination you say that when you asked him why he didn't give up his method of life, he replied that all was not right at home?

A. It was to that effect that it wasn't right, and that he could have no peace at home.

W. H. BENNETT.

Subscribed and sworn to before me this 13th day of September, A. D. 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

516 *Deposition of W. J. Murtagh for Complainants. Filed Jan. 13, 1881.*

WILLIAM J. MURTAGH, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

I am a resident of Washington, D. C., and my occupation is that of a printer. I have resided in Washington since 1849. I knew Allison Nailor, Sr., during his lifetime for about eight or nine years. Our relations were not intimate, although I had business with him on several occasions. My business related to the renting of property in the interest of others who desired to rent such property. This covered a period from the time of my first acquaintance
517 down to a year or so before his death. On two occasions just before his death I met him at the stable of Wash. Nailor, and was a silent spectator of a controversy between himself and his son, Washington Nailor. I should think this occurred about one year before his heath. I should think these two occasions were a month or two apart. The difficulty, as I understood, was about the occupation of the property which Mr. Wash. Nailor was occupying, and the possibility of obtaining a lease from Allison Nailor, Sr., for the property. Mr. Nailor, Sr. seemed very much excited, and to me apparently without reason. He seemed to me under the influence of an ungovernable temper, and acted
518 like a man not possessing his full reasoning powers. He impressed me as a man that would get angry on the slightest provocation, and not in the full control of himself. I should think on one occasion — the subject of Mr. Nailor was under discussion considerable crimination and recrimination was indulged in by Mr. Nailor, Sr,, and Mr. Wash. Nailor. I think there was a change in him in the latter part of his life in contrast with the time I first knew him. He became more easily excited. He seemed to have an impression that some one was trying to wrong him. I should say that the change was very noticeable, very marked. He was a different man. I think he was not under the influence of
519 liquor when I saw him at the stables. There was a cunning about him, an ingenuity in his manner, which would indicate to me that he was not under the influence of liquor. I should think from what I saw in him that from an imaginary injury or pique of any kind he was liable to do almost any foolish thing.

Cross-examined by Gen'l RUTHERFORD:

Q. On these occasions at the stables and the interviews between Mr. Nailor, Sr., and his son Wash., do I understand that both were very angry and indulging in uncomplimentary language to each other?

A. Harsh language was used on both sides. The elder Nailor

evidently came to the stable with anger in his mind and
520 heart, while the younger Nailor was acting on the defensive. Mr. Nailor, Sr., would make a remark and Mr. Nailor, Jr., would reply that even if he was his father he would not allow him to make such remarks in his place. Young Nailor was principally engaged in replying to and warding off statements made by the elder.

Redirect:

Mr. Nailor's remarks at this time seemed principally to be statements of grievances received by him from everybody. Everybody's hand seemed to be against him, and he charged Wash. with being in the conspiracy. His language was not only violent, but demonstrative, and I expected to see a fight every minute.

W. J. MURTAGH.

Subscribed and sworn to before me this 13th day of September, A. D. 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

521 Adjourned until Thursday, Sept. 18, at 3 o'clock p. m.

Deposition of Everett Wroe for Complainants. (*Filed Jan.* 13, 1881.)

THURSDAY, *Sept.* 18*th*, 1879.

Met pursuant to adjournment.

Present: Counsel on either side and witnesses; whereupon EVERETT WROE, a witness produced and sworn on behalf of complainant-, did depose and testify as follows:

By Mr. COLE:

My name is Everett Wroe; I reside in Washington, D. C.; I am in the grocery business; I have resided in Washington for over fifty years; I knew Allison Nailor, Sr., in his lifetime, and knew
522 him nearly as long as I have known myself; I knew him intimately.

Q. What was Mr. Nailor's condition, physically and mentally, when you first knew him?

A. A thorough, practical business man, and one that I had every confidence in when I was dealing with him.

Q. When you first knew him what were his habits in relatitn to the use of intoxicating liquors?

A. He was steady.

Q. State whether there was any change in him in this regard during his life?

A. For the last ten years he was very dissipated.

Q. State whether there was any change in his mental and physical condition during his life from the time you first knew him?

A. I think there was.

523 Q. State whether that was a considerable change or slight.

A. I never thought that he was able to do any business or to do anything at all. He was a different man altogether.

Q. About when did this change in him begin to show itself?

A. The first was when he came down to buy my farm in Leonardtown. I think it was about the year 1870.

Q. How did you happen to notice the change then?

A. By his general deportment.

Q. Did you sell him your place?

A. No, sir.

Q. Did you have considerable conversation with him at that time?

A. I did; and always had, as he was a friend of mine.

Q. State about how frequently you saw him and conversed with him from that time up to the time of his death?

A. Frequently; very often.

524 Q. Did you see and converse with him frequently during the last year of his life?

A. I did.

Q. Do you remember of seeing him in the early part of the year 1878, say in February, March, or April?

A. I could not name the dates.

Q. Do you remember whether you saw him in the spring of the year 1878?

A. I saw him as often as two or three times a week, as he and I were very intimate friends.

Q. Please describe, as nearly as you can, the physical and mental condition of Mr. Nailor in the early winter and spring of 1878, stating his general appearance, his manner, and kind of conversation, and the impression that he made upon you as to his mental condition?

525 A. From the time he came up on the boat from my farm I thought he was demented and not in his right mind; he was so on to the time of his death; whenever I saw him he always looked blue. He appeared as though he had beeen drinking all the time, and he was not Allison Nailor in 1878, he had changed so much; his appearance had changed completely, and he could not talk on any business transactions whatever, and the impression he made on me was that he was loosing his mind.

Q. State whether, in your opinion, Mr. Nailor was competent in March, 1878, to sell and convey or make deeds for his real estate and comprehend and understand the nature of the transaction?

A. I think not.

(Opinion of the witness is objected to by def't.)

526 Q. How long before his death was he so incompetent in your opinion?

(Same objection.)

A. Eight or nine years, in my opinion.

Q. State what occurred when you got off the boat when you say you came up from your farm in 1870?

A. There was a hackman that wanted to take him in his hack, and I objected, and told him I had a conveyance for him. I took him in with me and drove up to what is called the "Republican Building," on 13th St. He then requested me to stop and let him out, and said he was going to the stables. I told him it was a late hour at night, and that he must go up home to his wife, Mrs. Nailor, on 13th street. He said he would not go there; but that he was going
527 on 17th street, and that he did not want me to with him. Mrs. Nailor called on me the next morning and asked me what had become of Mrs. Nailor, and I told her he went to 17th St. She then requested me to go there and endeavor to find him. I went to the house on 17th street and inquired of a woman if Mr. Nailor was there, and she said "No," and would not admit me. She was a rough looking woman; but I don't know her name. The house was on 17th street between "D" and "E" streets northwest. I don't know the names of any persons who lived in that house; but I know that Mr. Nailor stopped there. I don't think that there ever was a better man that lived than Allison Nailor, Sr., up to the last ten or
528 twelve years when he went to live with this woman, as I understand.

Q. At this time had you heard that he had left his home and gone to live with Kate Conley?

A. I heard that he had left his home and had gone to live with a common prostitute on 17th st.; Conley was her name.

Q. Did you ever go to the house to see Mr. Nailor on any other occasion after the one above mentioned?

A. I did, at the request of Mrs. Nailor.

Q. How often?

A. Three or four times to try and get him to come home.

Q. Was this soon afterwards or some time after the occasion above mentioned?

A. I went there, to the same house, nearly every week for three or four weeks afterwards, and always saw this woman there, but
529 could not catch Mr. Nailor; she always said that he was not there. I always went at the request of Mrs. Nailor.

Q. Did you ever talk with him about going back home to live?

A. I did.

Q. How did he talk about that?

A. He said he had his objections.

Q. Did you talk with him more than once about that?

A. Yes, sir; dozens of times.

Q. Did he express himself about the same on each occasion?

A. Yes, sir.

Q. Did he tell you what his objections were?

A. He did not, although I asked him the question.

Q. Did he refuse to tell his objections?

A. He would not give me an answer. I then asked him if he doubted the chastity of his wife, and he said "No."

530 Q. Do you know this Conley woman?

A. No, sir.

EVERETT WROE.

Subscribed and sworn to before me this 18th day of September, A. D. 1879.

A. BROWNING,
Examiner.

Deposition of Joseph L. Savage for Complainants. (*Filed Jan.* 13, 1881.)

JOSEPH L. SAVAGE, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is Joseph L. Savage; I reside at No. 120 E street northwest in this city; I am a hardware merchant; I have resided in Washington all my life, except six or seven years, when I
531 was away. I knew Allison Nailor, Sr., and knew him ever since I can recollect. I knew him well enough to talk to him when we met.

Q. About how frequently did you see him before you went away in 1860?

A. As often as once a week.

Q. About how frequently did you see him after your return in 1867 up to his death?

A. Quite as often.

Q. Did you notice any change in the physical and mental condition of Mr. Nailor at any time during the time that you knew him?

A. My recollection is that he was actively engaged in business up to 1860—I don't know how much longer; and after my return, in 1867, he was out of business and had the appearance to me as though he was drinking quite hard.

532 Q. What was his physical and mental condition from 1870 or 1871 down to the time of his death, as compared to what it was up to 1860?

A. It was very apparent to me that he was in a bewildered and confused state, and he was very much changed; he seemed to be quiet and morose, where he used to be active and cheerful.

Q. Do you remember of talking with him in the early part of the year 1878, say in February, March, or April?

A. No, sir; I do not remember of any conversation with him; I noticed that after it got talked around that he was living with this woman that he kept away from me and from others; I remarked it to others at the time, those who used to meet and talk with him.

533 Q. Did you see him and observe him in the spring of 1878?

A. Yes, sir; I saw him.

Q. State whether, in your opinion, he was competent to understandingly sell or dispose of real estate to the value of $20,000.00 in the spring of 1878?

(Objected to by def't.)

A. I do not think he was in a condition to attend to any business.

Q. How long, in your opinion, was he so incompetent before his death?

(Same objection.)

Cross-examination by Gen'l RUTHERFORD:

Q. How frequently did you see Allison Nailor, Sr., during the last two or three years of his life?

A. As often as once a week.

Q. When did you have the last business transaction with him?

A. I have not had any with him for twelve years.

534 Q. On these occasions when you met him were they casual passings in the street, or did you stop and talk with him?

A. When we passed on the street we would merely speak. When I met him at 13th and E streets, I had a conversation with him.

Q. Upon what do you base your opinion of Mr. Nailor's incapacity to transact business, or to dispose of his property?

A. Because every time I saw him he was under the influence of liquor, and I know a man in that condition is incompetent to transact business.

Redirect by Mr. COLE:

Q. Any other reason?

A. That is the only one I could judge of.

JOS. L. SAVAGE.

Subscribed and sworn to before me this 18th day of Sept., A. D. 1879.

A. BROWNING,
Examiner.

535 *Deposition of Samuel C. Wroe for Complainants.* (*Filed Jan.* 13, 1881.)

SAMUEL C. WROE, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is Samuel C. Wroe; I live in Fairfax county, Virginia. I was born in Washington and lived here about fifty-three years, and went to Fairfax to live two years ago. I knew Allison Nailor, Sr., ever since I can remember. I built houses for him years ago. I followed the business of builder while in Washington, and am farming now. I knew Mr. Nailor very intimately down to the time of his death, and have seen him and talked with him fre-

536 quently to the time of his death. There was a great change in Mr. Nailor during his life. I noticed the change as soon as he took up with this Irish woman, Conley. He was drinking all the time; he did not know anything, and he took his wife's carriage to carry this woman to market, and his wife would have to walk. I have often tried to get Mr. Nailor to repent and leave this woman and go home to his wife, but he refused to go home and said his wife would not receive him. Mrs. Nailor asked me to go and get

him to come home. I found him and got him part of the way home, and then he refused to go home. I told him that Mrs. Nailor said she would receive him and take care of him.

537 Q. Did you ever go to see Mr. Nailor while he was living with this woman? If so, where?

A. Yes, sir; on 10th street, between Pennsylvania avenue and C street.

Q. Who did you see there?

A. A woman came to the door—a red-headed woman. I don't know who she was, but she said Mr. Nailor was up in bed and could not be seen.

Q. Do you remember of going to see him at any other place? If so, where?

A. I think I went to see him on 14th St., but I am not sure.

Q. Are you a brother to the Everett Wroe who has testified in this case?

A. Yes, sir.

Q. Were you present when Mr. Nailor went down the river to look at a farm, as testified to by your brother?

538 A. I think I was present.

Q. How did Mr. Nailor appear on that occasion?

A. He was drunk; so much so that I would not carry him to my house. When he was drunk he was very bad, but when he was sober he behaved as well as any man.

Q. What were his habits about drinking, from about the time he went to live with the Conley woman up to the time of his death?

A. He was drinking all the time after that, and was drunk every time I saw him. He was not the same man after that.

Q. Did you ever hear him talk of this woman, Kate Conley, as connected with his family troubles? And if so, what did he say?

(Objected to by def't.)

539 A. Yes, sir; I did on the day he was out to the farm, and he then said that she was the cause of all his troubles, and he cried like a child, and said to me, "Sammy, take me home, for God's sake."

Q. Did you notice any change in his personal appearance towards the last of his life from what it was in earlier years; and, if so, what was the change?

A. There was a very great change. He looked like a dissipated, bloated man; his face had a blueish cast. In early years he took an occasional spree, but in after years he seemed to live under the influence of liquor, and his mind was also greatly changed. He seemed to have lost all power of conversation, and became a perfect inebriate.

540 Q. State whether, in your opinion, Mr. Nailor was competent to understandingly dispose of or transfer large quantities of his real estate in the spring of 1878?

(Objected to by def't.)

A. I don't think he was then, or two years ago either. In fact, I

never considered him competent to transact business since the time I went to see him on 10th street. That was just a short time before he went down to the farm belonging to myself and my brother near Leonardtown, Md.

SAM'L C. WROE.

Subscribed and sworn to before me this 18th day of Sept., 1879.

A. BROWNING,
Examiner.

541 *Deposition of William A. Fenwick for Complainants.* (*Filed Jan.* 13, 1881.)

FRIDAY, *Oct.* 24*th*, 1879—3 p. m.

Met pursuant to agreement of counsel.

Present: Counsel on either side and witnesses; whereupon WILLIAM A. FENWICK, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is William A. Fenwick. I reside at the corner of 11th & C Sts. southwest, in this city, and have been in the sash, door, and blind business at the corner of 12th St. and Ohio avenue, in this city. I was in that business for about twenty years.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. I did.

542 Q. About how long did you know him?

A. Off and on about twenty-two years.

Q. Did you do any business with him during the last years of his life?

A. I did.

Q. When was the last business you had with him, and what was it?

A. It was in August, 1878. I sold him a bill of goods, consisting of building material, such as doors, blinds, sash, &c., to repair a house on 12th St., south of Pennsylvania avenue, known as the "Iron Clad."

Q. How often did you see Mr. Nailor about that time?

A. I think I saw him several times.

Q. What was his condition at that time? Describe as nearly as you can how he appeared, acted, and talked.

543 A. I have known him for about twenty-two years. When I knew him in his early days he was a very active business man, and appeared to understand everything he did thoroughly; a lapse of six or eight years then took place, and I did not see him much, and had no business with him until the business transaction in 1878, and at that time there was something about him that I thought was not right. He was forgetful, and could not remember what you said from one day to another.

Q. Can you give any instance in which he forgot anything that you and he talked about?

A. On one occasion when he ordered some goods to be sent to his house he forgot all about them when they were sent to him,
544 but the woman he had there with him knew all about it. I think this was early in 1878.

Q. Upon what house was the material used that you sold him in 1878?

A. A house in South Washington where he lived before he moved on 12th St. The last bill was for material used on the house where he died, on 12th St.

Q. Did he appear to be manly and strong at the time you sold him this lumber in 1878?

A. He did not, but on the contrary very week and childish. I do not desire to swear positively, but I do not think that Mr. Nailor was all right.

WM. A. FENWICK.

Subscribed and sworn to before me this 24th day of October, A. D. 1879.

A. BROWNING,
Examiner.

545 *Deposition of Harriet Schofield for Complainants.* (*Filed Jan.* 13, 1881.)

HARRIET SCHOFIELD, a witness produced and sworn on behalf of the complainants, did depose and say as follows:

By Mr. COLE:

My name is Harriet Schofield; I reside at No. 1801 on 7th St. N. W., in this city.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. Yes, sir.

Q. When did you first meet him?

A. About fifteen (15) years ago.

Q. Where?

A. I rented a house from him on D St., and I met him there. My husband rented the house.

Q. Do you know Kate Conley, the defendant in this suit?

A. Yes, sir.

Q. How long have you known her?

546 A. About eleven (11) years.

Q. Where did you first meet her?

A. At Mrs. Bailey's first, and afterwards was introduced to her at Mr. Dave Roache's on "K" St. between 17th and 18th Sts. Mrs. Bailey then lived on the same street with Mrs. Roach, three or four doors from her.

Q. Do you know when and where Allison Nailor, Sr., first met Kate Conley?

A. At my house.

Q. Can you give the time?

A. I don't know exactly, but I think it will be ten (10) years next month.

Q. How do you fix that date?

A. It is just my recollection.

Q. Please state fully how and under what circumstances Mr. Nailor met Kate Conley; how she and Nailor came to be at your house together.

547 A. Mr. Nailor was after me to get him a girl; I went to Bailey's and saw Kate Conley's *and saw Kate Conley* there and told her that Mr. Nailor wanted to see her, and asked her if she would come, and she said that she would when she got ready. I told her what Mr. Nailor wanted with her; she got ready and she came with me; we then went to my house, on Delaware avenue between "C" and "D" streets; it was on Saturday evening when we went together to my house, and she saw Mr. Nailor on the following Monday at 10 o'clock a. m.

Q. How long did Kate Conley remain at your house?

A. She came to my house in November—ten years ago—1869, and remained until the first (1st) of March following.

Q. How often did Mr. Nailor visit her while she was at your house?

A. Frequently.

548 Q. On the first visit, which you say occurred on Monday following the Saturday that she went to your house, did he or not see her privately?

A. He did.

Q. Did he or not generally see her privately on the occasions of his subsequent visits?

A. He came there and said that he would pay her board if she could stay with me. Sometimes he came there while on a spree and stayed for a week at a time, and neither of us could get him to go away.

Q. Did he stay at your house nights?

A. Yes, sir.

Q. Did he occupy the same room with Kate Conley?

A. Yes, sir.

Q. Did he tell you when he asked you to get him a girl that that was the purpose he wanted her for?

549 A. Yes, sir.

Q. Did you so inform Kate Conley when you went for her?

A. Yes, sir.

Q. How long did you know Kate Conley at the time you went for her?

A. One year, about.

Q. When Mr. Nailor told you he that he wanted you to get him a girl, did he ask you to get him Kate Conley?

A. No, sir.

Q. Did he ever mention her name to you before you got her to come to your house, as you have stated?

A. No, sir; they were both strangers.

Q. Did you reside on Delaware avenue during all the time that Kate Conley was with you?

A. No, sir; only one month.

Q. Where did you remove to from there?

A. On "L" street, between 12th and 13th.

550 Q. Do you remember of Mrs. Nailor coming to your house while living on "L" St.?

A. Yes, sir.

Q. What was she there for?

A. She came there and took Mr. Nailor home.

Q. Where did you remove to from "L" St., and how long did you live on "L" St.?

A. One month on "L" St., and removed from there to Mr. Nailor's house on 14th St., and lived there, I think, only four days.

Q. While you were living in the house on 14th St., state whether Mrs. Nailor came there, and for what purpose.

A. She came there and wanted Mr. Nailor to go home with her, but he would not be seen. Mrs. Nailor and Kate had a fuss, and Kate said that Mr. Nailor had seduced her, and that she had a right to him.

551 Q. Where did you remove to from 14th St.?

A. On E St., between 17th and 18th. Mrs. Nailor then came there, and I told Kate that Mr. Nailor should not come there again. Mr. Nailor afterwards came at 1 o'clock at night and tapped at the door, when I refused to let him in. Kate Conley then got up and let him in, and I told them both that they would have to leave my house, and they both left at that time.

Q. Do you know, of your own knowledge, or from what Kate Conley told you, where they went when they left your house?

A. I know they went to the house of an Irish woman below me and stayed all night. The next day they left there and

552 boarded on the avenue somewhere, I don't know where, and soon afterwards they went to housekeeping in one of Mr. Nailor's houses, in the first ward somewhere.

Q. When Kate Conley first came to your house how was she provided with clothing, and what property had she, if any, so far as you know?

A. She was poorly provided with clothing, and had no property.

Q. What was she doing to obtain a living from the time you first knew her up to the time she came to your house?

A. She was a servant girl to Mr. Topham (the harness man) at one time, and was a servant girl with a family by the name of Halstead, on the corner of 18th and "K" str's.

Q. What was she doing at Mrs. Bailey's when you went there for her?

553 A. I could not say; I never visited Bailey's. She told me that when she was not in service she made her home with them.

Q. Do you know of what persons Mrs. Bailey's household consisted at that time?

A. No, sir.

Adjourned until Monday, Oct. 27th, 1879, at 3 o'clock p. m.

A. BROWNING,
Examiner.

MONDAY, *Oct. 27th*, 1879—3 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel on either side and witnesses; whereupon the cross-examination of the witness, HARRIET SCHOFIELD, was commenced as follows:

By Mr. CARRINGTON:

Q. How long had you known Kate Conley before she came to your house?

554 A. Between one and two years.

Q. What was her character for chastity and virtue up to that time?

(Objected to by compl'ts, because incompetent.)

A. I knew nothing about it.

Q. You say that Kate Conley claimed that Mr. Nailor seduced her. Was that the fact?

A. I could not swear to it, but I believe he did.

(Objected to by complainants.)

Q, How long have you been married?

(Objected to by compl'ts as immaterial.)

A. I was married fifteen years ago first, and my second marriage has been thirteen (13) years ago.

Q. What was the name of your first husband?

(Same objection by compl'ts.)

A. John M. Parkhurst.

Q. What was the name of your second husband?

(Same objection by compl'ts.)

555 A. Henry Schofield.

Q. Did you ever go under any other name than Mrs. Parkhurst and Mrs. Schofield?

A. None but my maiden name.

Q. What was your maiden name?

A. Harriet Young.

Q. Did you ever go under the name of Harriet Farrell?

(Objected to by compl'ts, same as above.)

A. No, sir.

Q. How long have you lived in Washington?

A. Between fifteen (15) and sixteen (16) years.

Q. What was your business or occupation at the time you introduced Kate Conley to Allison Nailor, Sr.?

(Same objection by compl'ts.)

A. I was keeping a house the same as I do now, me and my husband.

Q. What kind of house did you and your husband keep at that time?

556 (Same objection by compl'ts.)

A. The same as anybody else kept.

Q. Question repeated.

(Same objection by compl'ts.)

A. A private house.

Q. Were such men as Mr. Nailor in the habit of visiting your house?

(Same objection by compl'ts.)

A. No, sir.

Q. What motive induced you to procure Kate Conley for Mr. Nailor?

(Objected to by compl'ts.)

A. He asked me to get him a girl several times, and then I went and got this girl for him.

Q. What were you paid or promised for doing so?

(Objected to by compl'ts for same reason last above stated.)

A. I was neither promised or paid.

Q. Did you procure women for other men before or since?

557 (Same objection by compl'ts.)

A. No, sir.

Q. You thought and believed Kate Conley to be a virtuous women at that time, did you not?

(Same objection.)

A. I think she was.

Q. Did you not know that Mr. Nailor was a married man at the time you procure- Kate Conley for him?

(Same objection by compl'ts.)

A. Yes, sir.

Q. Now, Mrs. Schofield, was not the reason that you went after Kate Conley for Mr. Nailor that you thought her to be a virtuous woman?

(Objection same as above by compl'ts.)

A. When I went after her I did not know whether she was virtuous or not; when I asked her she came with me.

Q. Did not Mr. Nailor tell you to get him a virtuous woman?

558 (Same objection by compl'ts.)

A. No, sir.

Q. What kind of woman did he tell you to get?

(Same objection by compl'ts.)

A. He told me to get him a girl.

Redirect by Mr. COLE:

Q. Did you hear any conversation between Kate Conley and your husband on the Sunday following the Saturday that she went to your house and the day before she saw Mr. Nailor in reference to her seeing him, or for what she was to see him?

(Objected to by def't.)

A. I did not hear the conversation.

Q. How far is it from the house where you then lived, near Delaware avenue, to the house where you went for Kate Conley, on "E" St. between 17th and 18th streets?

A. About one mile and a half or a quarter.

559 Q. How far beyond the Capitol did you live then?

A. One square and a half, I think.

Q. How far beyond the President's House did you go for Kate Conley?

A. I think about two squares.

Q. How long were you at the house where you found her before you both left to return to your house?

A. About ten minutes.

her
HARRIET x SCHOFIELD.
mark.

Witness: A. BROWNING.

Subscribed by mark and sworn to before me this 27th day of Oct., A. D. 1879.

A. BROWNING,
Examiner.

Deposition of James S. Topham for Complainants. (*Filed Jan.* 13, 1881.)

560 JAMES S. TOPHAM, a witness produced and sworn on behalf of the complainants, did depose and say as follows:

By Mr. COLE:

My name is James S. Topham, and I reside at No. 1010 on Massachusetts avenue, in this city. I am a harness manufacturer. I have resided in Washington for twenty-four years.

Q. Do you know Kate Conley, the defendant in this suit?

A. I knew her ten years ago, but I don't think I would now.

Q. When, where, and under what circumstances did you first know her or know of her?

A. In 1869. I lived at 1125 on 4th street N. W., and she called there to hire as a servant girl, and my wife hired her. I think it was in the early spring of 1869 that she came there. She left my

house, I think, in August or September, 1869. She went away
561 from the house and stayed two nights and the best part of two days, and stated that her cousin's child had died, and that she had to attend to its burial, and her feet were swollen, having walked a good deal, or otherwise she would have been home; and then I discharged her.

Q. What were her habits about staying out or remaining in the the house in the evening, after dark, while she was working with you?

A. Sometimes two or three times in the week she would go out and stay until ten (10) o'clock, and sometimes she would remain out all night, but rarely; Kate Conley was an Irish girl, about twenty-four years of age, I should think.

JAMES S. TOPHAM.

Subscribed and sworn to before me this 27th day of Oct., 1879.

A. BROWNING,
Examiner.

562 Adjourned until Wednesday, Oct. 29th, 1879, at 7 o'clock p. m.

A. BROWNING,
Examiner.

Deposition of Henry Scofield for Complainants. (*Filed Jan.* 14, 1881.)

WEDNESDAY, *October* 29, 1879.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and E. C. Carrington, Jr., for defendant; whereupon HENRY SCOFIELD, a witness of lawful age, produced, sworn, and examined in behalf of complainants, deposes as follows:

By Mr. COLE:

Q. Where do you reside?

A. At 1801 7th street northwest, Washington, D. C.

Q. How long have you resided in Washington?

563 A. Thirteen years.

Q. What relation, if any, are you to Henrietta Scofield, who has testified in this cause?

A. I am her husband.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. Yes, sir.

Q. Do you know Kate Conley, the defendant in this suit?

A. Yes, sir.

Q. How long ago did you first become acquainted with her?

A. In 1869.

Q. When?

A. On K street between 17th and 18th streets.

Q. At whose house?

A. At the house of Mr. Roach.
Q. What was she doing there, if you know?
A. She was visiting the sisters of Mr. Roach.
Q. What time in 1869 was this?
A. About June or July.
Q. When and where did you next see her?
564 A. At my house, on Delaware avenue, in November, 1869.
Q. Who came to your house with her on that occasion?
A. My wife.
Q. How long was your wife gone from the house when she returned with Kate Conley?
A. Between one and two hours.
Q. Do you remember what day of the week this was?
A. Saturday.
Q. How long was it after Kate Conley came to your house before Allison Nailor, Sr., came there?
A. On the Monday following.
Q. Did you have any conversation with Kate Conley about Allison Nailor after she came to your house and before Mr. Nailor came? If so, give the conversation as fully as you can.
A. I asked her on Sunday if she knew what she had come
565 there for; she replied she did; I then told her if she was a decent girl she had better go home, and she said she would stay and see Mr. Nailor.
Q. How long did Kate Conley remain at your house after that?
A. I believe between three and four months.
Q. Did you live at the same place you did when Kate Conley came to your house during all the time she remained with you?
A. No, sir.
Q. At what other place or places did you live during that time?
A. On L street, between 13th and 14th streets; on 14th, near B street, southwest; on E street between 17th and 18th streets northwest.
Q. Did any of the houses that you lived in during that time belong to Mr. Nailor; and, if so, which of them?
A. The house on 14th street near B street southwest.
566 Q. Where were you living when Kate Conley left your house finally?
A. On E St. between 17th and 18th northwest.
Q. Please state the circumstances under which she left; how she came to leave.
A. Mr. Nailor came there late one evening, and my wife told him that he should not remain there; Kate Conley said if he had to leave she would go too, and they both went.
Q. Who let Mr. Nailor into the house on that occasion?
A. Kate Conley.
Q. After she left your house did you hear that she and Mr. Nailor were living together?
A. Yes, sir.
Q. How long after they left before [you] heard it?
A. I don't remember exactly; it may have been a month.

Q. During the time Kate Conley was at your house, state
567 whether Mr. Nailor visited there; and, if so, how frequently.

A. He was seldom away; I couldn't say how often he was there; he was there almost all the time.

Q. What was his condition generally during that time when you saw him; I mean in relation to intoxication or otherwise; whether he was under the influence of intoxicating liquors?

A Sometimes he came there sober and other times intoxicated.

Q. Do you remember of his wife or any one else coming to your house for him during that time? If so, state how often and any circumstances you may remember connected with the same.

A. His wife came to the house once on L street and once on 14th street. At the house on 14th street she didn't see him, because we didn't unlock the door to let her in. She didn't ask for him.
568 She said he was there. She saw him at the house on L street, and I told him to go home with her, but he refused to do so; this was not in Kate Conley's presence. She then left the house and returned with a policeman. The policeman asked me if I wished Mr. Nailor taken out, and I said yes. Mr. Nailor then got up and left the house with the policeman and Mrs. Nailor.

Q. How did Mrs. Nailor address and talk to Mr. Nailor on that occasion; I mean what was her manner towards him?

(Objected to by Mr. Carrington.)

A. She was very excited at the time; I don't remember her language.

Q. Did she speak to him kindly or otherwise?

(Objected to by Mr. Carrington.)

A. Otherwise.

569 Q. Did she see him on more than one occasion whe- she came to your house, so far as you know?

A. Only at the house on L street.

Cross-examined by Mr. CARRINGTON:

Q. What business are you engaged in now?

A. I am a storekeeper—cigars and notions.

Q. What business were you engaged in — 1869, on Delaware avenue?

A. None at that time.

Q. In what business were you engaged at the various houses to which you moved during the period Kate Conley lived with you?

A. None.

Q. Did you have any means upon which to subsist, and, if so, what were they?

A. Well, I object to answering that question; it is a personal matter altogether and has nothing to do with the case.

Q. Who resided with you on Delaware avenue besides Kate Conley?

570 A. My wife.

Q. Any one else?

A. No, sir.

Q. Was Mr. Nailor a frequent visitor at your house before she came there?

A. I never saw him there before.

Q. Did any one beside Kate Conley live with you from the period she came to live with you until she left?

A. Only my wife.

Q. What occasioned you to make so many changes of residence during that period?

A. At the request of Kate Conley, who said she was annoyed by Mrs. Nailor coming after her.

Q. Who introduced your wife to Kate Conley, or through whom did they become acquainted?

A. Either Miss Roach or Mrs. Bailey.

Q. What impresses so distinctly upon your mind the day upon which Kate Conley came to your house?

A. Because I objected so strongly to her coming and the
571 trouble it afterwards brought.

Q. To whom did you express that objection and when?

A. To my wife, before and at the time she went after her.

Q. Then you had discussed the matter before your wife went after her?

A. Yes, sir.

Q. How often?

A Probably half a dozen times.

Q. Why was Kate Conley selected?

A. That I don't know. I didn't select her.

Q. You knew for what purpose your wife was going on that Saturday you have spoken of?

A. I did.

Q. What inducement did you receive to consent to such a thing?

A. None at all; it was without my consent.

Q. Under what obligations, if any, were you or your wife to Mr. Nailor?

A. None that I know of.

Q. Had any such thing occurred at your house before that time, or has it since?

A. No.

572 Q. How long had you known Mr. Nailor before 1869—before Kate Conley came to your house?

A. I first knew him in 1869, about three months before she came to my house.

Q. You knew he had a wife and children?

A. I had heard so.

HENRY SCOFIELD.

Subscribed and sworn to before me this 29th day of October, 1881.

IRVING WILLIAMSON,
Examiner in Chancery.

Deposition of Thomas Trundle for Complainants. (*Filed Jan.* 13, 1881.)

THOMAS TRUNDLE, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

573 Q. Where do you reside?

A. In Montgomery county, Maryland.

Q. How long have you resided there?

A. I suppose about thirty years.

Q. What is your business or occupation?

A. I am a carpenter by trade.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. Yes, sir.

Q. About how long did you know him?

A. I think it was in 1857 when I first got acquainted with him.

Q. How intimately did you know him after that time?

A. I knew him from that time up to his death. I worked for him for six or seven years during the first of my acquaintance with him.

Q. What kind of work did you do for him?

A. Carpenter's work; that house on 13th street I built for him and that stable where the boys now keep.

574 Q. What sort of man was Mr. Nailor at that time?

A. At that time he was a smart business man; that is what I should call him.

Q. What were his habits about drinking about that time?

A. Well, he would take a spree once in awhile, maybe two or three months apart.

Q. After you were through working for Mr. Nailor state whether you saw him frequently from that time down to the time of his death.

A. I have seen him frequently.

Q. What sort of a man was he towards the last of his life, say the last six or seven years?

A. The last five or six years that I saw Mr. Nailor he was pretty much all the time under the influence of liquor.

Q. How was his physical and mental vigor and capacity during those last years as compared with what they were when you first knew him?

575 A. It was very different; you couldn't get any reason or sense in anything he would agree to. He sent for me in Howard county to come down to put up a house on a farm, and after I came down he couldn't tell where he wanted the house or what kind of a house he wanted; it was one thing after another. He kept me down here a whole week, and I stayed at his house on 14th street.

Q. When was that, as near as you can tell?

A. I believe that was in 1875 or 1876. I know it was when he was over there on 14th street.

Q. Was Kate Conley living with him at that time?

A. Yes, sir.

Q. State what Mr. Nailor's condition was as to intoxication during that week you say you were —.

576 A. He was drunk all the time while I was there.

Q. Did you stay there nights?

A. Yes, sir.

Q. State what, if anything, Kate Conley did while you were there to encourage or promote his drinking?

(Objected to by Mr. Carrington.)

A. She kept plenty of whiskey there for him, and frequently gave it to him.

Q. Where did you sleep during the time you were there?

A. I slept with Mr. Nailor in the front room upstairs.

Q. State whether Kate Conley ever gave or sent him anything to drink to his bed while you were there; and, if so, how often.

A. Some two or three times during the night she would bring it herself; she didn't send it. She never missed a morning while I was there that she didn't carry him up a milk punch; that

577 was while I was down stairs. She called it a milk punch; I didn't know what it was.

Q. How often did you see Mr. Nailor from that time down to the time of his death?

A. Sometimes once a week, sometimes in two weeks. I was very well acquainted with the man, and used very often to go to see him.

Q. What was his condition on those subsequent occasions when you saw him?

A. Well, he was pretty much all the time under the influence of liquor. I couldn't get much out of him no way.

Q. Did he seem to be active and lively?

A. No, sir; he appeared to be very feeble. He could hardly get around. He was very different from what he was when I first knew him.

Q. Did you ever see him in the presence of Kate Conley

578 after the week you stayed at the house with him?

A. Yes, sir.

Q. How often?

A. I think I saw him two or three times after that with her.

Q. What influence or control did she seem to have or exert over him, if any?

A. Well, she appeared to be very kind to him, and to give him everything he wanted, especially a plenty to drink. I never heard her say anything cross to him.

Q. Did he or not seem to consent to or acquiesce in what she wished, so far as you saw, or did he seem to be inclined to set up his will against hers, and not to do as she wanted him to do?

(Objected to by Mr. Carrington.)

A. I don't know whether he did or not. I couldn't state that. I know they used to have differences about certain things, but what it amounted to I didn't know.

579 Q. When did you last see Mr. Nailor in Montgomery county?

A. I think it was about some five or six months before he died. He was up on the farm. The last time I saw him was up there, and it was in the summer before he died.

Q. Did you have any conversation with him at that time?

A. Yes, sir.

Q. What was his condition then?

A. He was at that time talking about digging into a bank and getting out some white sand. He thought it would be very valuable if he brought it to town. That was about the amount of his conversation that day. I don't think he was very drunk that day, but his mind seemed to be wandering. A man in his right mind wouldn't have been talking about digging sand out of where he was talking of and bringing it to town.

580 Q. When did you last see him in the presence of Kate Conley, and where?

A. As well as I can recollect, the last time was when they were up on what they call the fifty-acre lot, on the old road. This was a few weeks after he had been talking about the sand.

Q. Do you remember of seeing Mr. Nailor at Rockville in the spring of 1878?

A. It was this last spring or year ago. I recollect seeing Mr. Nailor there. I don't remember the day of the month. I was there on business, and could tell the exact day by looking at some papers up there.

Q. Can you state what month it was in?

A. I think it was some time in May; it might have been in April.

581 Q. Was it as late in the season as the first of April?

A. It might have been. I think it was a little later than that.

Q. Whereabouts in Rockville did you first see Mr. Nailor on that day?

A. It was at Kliendest's Hotel.

Q. What was his condition on that occasion?

A. He was so drunk he couldn't walk from the hotel door to the buggy or carriage, I forget which, he came in.

Q. What time in the day was that?

A. That was somewhere about three or four o'clock in the afternoon.

Q. Who was with him on that day?

A. This here Katie; he called her Kate Conley; she was with him. There was a little boy sitting in the front of the buggy.

Q. When you first saw them where was Kate Conley?

A. She was in the buggy or carriage standing in front of the hotel.

582 Q. Did you see Mr. Nailor leave town on that day?

A. Yes, sir. I came with him out of Rockville to the fair grounds. I got out there and they kept on saying they were going to town.

Q. How much intoxicated was he on that day?

A. He could hardly walk.

Q. Did you get into the carriage with him and Kate Conley?

A. Yes, sir.

Q. What, if anything, did he say to you on that day about his going to make a deed or conveyance for some of his real estate?

A. He said he was going to make a deed to that boy, pointing to the boy in the front of the buggy. Those were the words he spoke coming out of the bar-room.

Q. Did he say what real estate he was going to make the boy a deed for?

583 A. I think it was the Peter farm. I know that farm. It is about five or six miles from Georgetown, in Montgomery county.

Q. Did he say that voluntarily, or in response to a question from you?

A. This man that was with him—Viers—asked him what he was going to do with all his property. I believe that was the way it came up, and he said as I have already stated.

Q. Did you see Mr. Nailor drink anything on that day?

A. Yes, sir, I did.

Q. When and where?

A. In the hotel there before he came out.

Q. Did you see him drink any after leaving the hotel that day?

A. I am not sure whether he did. I knew they had a bottle of whiskey in the basket. I took a drink, but I don't know whether he did or not. I know Kate Conley asked him to take a drink.

584 Q. Who invited you to take a drink?

A. Kate Conley; she took the bottle out of the basket.

Q. How did you happen to get into the carriage?

A. Because they invited me to go to town with them. I saw Mr. Nailor was pretty tight and tried to get him out of the town. When they got out on the hill I said I had some business, and got out and went back.

Q. Who invited you?

A. She did; he was so drunk he couldn't invite anybody.

Q. State whether you know of your own knowledge of Kate Conley having sexual intercourse with any man; and, if so, when and where?

A. Only once; that was with myself; that was on 14th street; it has been three or four years ago.

585 Q. State whether, in your opinion, Mr. Nailor was competent during the last five or six years of his life to understandingly dispose of or make deeds of large portions of his real estate.

A. I don't think he was.

Q. How long do you think he was incompetent to do so before his death?

A. About six or seven years before his death; I don't think he was competent; I have very good reasons for it, because I could always transact business with him, but the last five or six years I couldn't do anything with him at all.

Cross-examined by Mr. CARRINGTON:

Q. How far do you live from here?

A. About seven or eight miles.

Q. Who did you come down with from your place to-day?

A. This is the gentleman, Mr. Trimble.

Q. What time did you get to Washington, and where have
586 you been since your arrival?

A. After we got here, which was about six or seven o'clock, we went to the stable, and from there right here to this office.

Q. Did Mr. Trimble drive out for you?

A. Yes, sir.

Q. Have you been drinking any to-day?

A. I had a drink before I started.

Q. Is that all.

A. That was all; one drink before I started, and one this morning; two drinks is all I have had to-day.

Q. You had frequent conversations with Mr. Nailor during the time you stayed at his house; upon what subjects did you converse?

A. It was nothing very important; it was first one thing and then another; he was flying off from one subject to another; we talked of different things around the country.

587 Q. Did the conversations make a decided impression upon your memory?

A. None at all, sir.

Q. Is there not some one that did?

A. No, not at all; it didn't amount to anything, the conversations that we had.

Q. Can't you remember Mr. Nailor's saying something that was peculiar; and, if so, what?

A. For instance, he would talk about things no one could do, and he would fly from one thing to another; there was no reason in anything he would say.

Q. You have said he would say something peculiar; now tell us what?

A. He was talking about digging sand out of that bank; bringing it to Washington and selling it to the foundry; that was all nonsense.

Q. There was sand there?

588 A. I don't know; there was some white looking stuff; I don't know whether it was sand or not; I know it wouldn't have paid to have it brought here.

Q. What do you think; was it sand or not?

A. I don't think there was much sand about it, a kind of clay; I don't know what you might call it.

Q. Why wouldn't it pay to bring it to Washington or Georgetown?

A. That's my opinion of it. It would depend on what he got for it and how much it would cost to bring it. No reasonable man would have talked about bringing such stuff as that to Washington. He wouldn't have talked in that way when I first knew him. He would have been in a better paying business than that.

Q. Are you married?
A. No, sir.
Q. Never have been?
589 A. Yes, sir.
Q. How many children have you?
A. One that I know of, and I don't know how many more.
Q. What do you mean by that?
A. When I was married I had one child, but since then I don't know how many outsiders I have got.
Q. How old a man are you?
A. I am fifty-three.
Q. How often did you have sexual intercourse with Kate Conley?
A. Once.
Q. In what year?
A. About three years ago; it was when they lived on 14th street.
Q. Was it two or three years ago?
A. About three years ago.
Q. What month in the year?
A. I believe it was in February; somewheres about there.
Q. What day of the week?
A. I don't recollect now; I believe it was on Sunday, if I
590 am not mistaken, or on Monday.
Q. It was in the morning then, at what hour?
A. I couldn't tell you; I know it was early in the morning.
Q. As near as you can come at it?
A. I don't know about the hour; I don't notice the hours when I am at anything of that kind.
Q. In what room of the house was it?
A. It was in the back room up-stairs.
Q. Had you slept at the house that night; and, if so, in what room, and with whom?
A. Slept with Mr. Nailor, in the front room up stairs.
Q. Had you arranged with her the evening or day before the intercourse that you speak of?
A. No, sir.
Q. Was she asleep when you went to her room?
A. I didn't go to her room.
Q. Did she come to yours?
A. No, sir; she was down stairs at the stove; I was down stairs and she came down with her hair hanging down.
591 Q. Where was Mr. Nailor?
A. He was in bed in the front room up stairs.
Q. Do you own the farm upon which you reside?
A. No, sir; I don't reside on a farm.

THOMAS TRUNDLE.

Subscribed and sworn to before me this 29th day of October, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until Friday next at 3 o'clock p. m.

Deposition of Patrick McNamara for Complainants. (*Filed Jan.* 13, 1881.)

FRIDAY, *October* 31, 1879.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and E. C. Carrington, Jr., for the defendant; whereupon PATRICK MCNAMARA, a witness of lawful age, produced, sworn, and examined by and in behalf of complainants, deposes as follows:

592

By Mr. COLE:

Q. Where do you reside?

A. 1359 Ohio avenue, Washington, D. C.

Q. How long have you resided in Washington?

A. Since 1857.

Q. What is your occupation?

A. I am not doing anything now; I have been in the grocery business.

Q. How long were you in the grocery business?

A. Twelve or fifteen years.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. Yes, sir.

Q. About when did you first know him?

A. About 1860 or 1861.

Q. State whether you continued his acquaintance down to the time of his death.

593

A. Yes, sir; I was better acquainted with him in the last years of his life.

Q. About how intimately did you know —?

A. I came in contact with him sometimes ten or fifteen times a day. I think during the last four or five years of his life I saw him on an average every day.

Q. Do you know Kate Conley, the defendant in this suit?

A. I do, sir.

Q. How often did you see her during the last five or six years of Mr. Nailor's life?

A. I saw her very often—on an average, three or four times a week.

Q. How far was your place of business from where they lived during that time?

A. Part of the time I was four squares away and the remainder of the time about three.

Q. Where did you see Kate Conley when you saw her, generally?

594

A. In they house they lived in.

Q. Did you ever see Kate Conley and Mr. Nailor together?

A. Yes; several times.

Q. What was Mr. Nailor's habit as to the use of intoxicating liquor during the last four or five years of his life?

A. He was under the influence of liquor all the time; more so in the last two or three years of his life than ever before.

Q. What was his condition, mentally and physically, during those last years of his life?

A. His condition was that of what I call a continual drunkard.

Q. Did he seem to be strong and healthy or week and feeble?

A. Very weak and feeble too.

Q. How about his conversation; did he talk as if his mind was vigorous and strong?

A. No, sir; his conversation was low and weak towards the latter end of his life.

595 Q. State whether Kate Conley encouraged and induced him to drink or whether she tried to keep him from it, so far as you observed?

A. I have seen her giving him drinks several times, him and I together, unmixed drinks, what he called bruised mint julep. He was very fond of them.

Q. How many times?

A. I couldn't tell how many times; quite a large number of times; over a hundred times.

Q. Where was it?

A. At their house.

Q. Did you go there frequently?

A. Yes, sir.

Q. How did you happen to go?

A. I was friendly with them. Mr. Nailor bought groceries from me, and sometimes she did, and I carried the groceries to their house.

596 Q. What was Mr. Nailor's condition during the last four or five years of his life, as compared with what it was in 1861, when you first knew him?

A. There was a vast deal of difference.

Q. Was there a great change in him?

A. Yes, sir.

Q. Was it for the better or worse?

A. Worse, sir.

Q. When did you first see or know Kate Conley?

A. When I first knew her they were living on E street; this was about 1871 or 1872. I have seen her before that but not to become much acquainted with her.

Q. Did you ever know of her and Mr. Nailor being together, associating together, before he left home and went to live with her permanently?

A. Yes, sir.

Q. Did you or not see them together frequently before he went to live with her?

A. Oh, very often.

597 Do you remember being a clerk in John Burke's store?

A. Yes, sir.

Q. When was that; how long ago?

A. It was in 1871 and 1872.

Q. Did you ever know Kate Conley to come to Burke's store while you were there; and if so, did you ever see Mr. Nailor give her money or buy goods for her?

A. I did, sir.

Q. More than once?

A. Yes, very often; I don't know how many times. I have taken groceries and provisions from Mr. Burke's for Mr. Nailor to her house.

Q. Was that before or after Mr. Nailor left home?

A. Before he left home.

Q. State whether you know of your own knowledge of Kate Conley having sexual intercourse with any man.

A. I do.

Q. State whether you ever took any liberties with her, and if so, what?

598 A. I have had my hands on her bosom and on all parts of her person—fondled her.

Q. When was the first time you ever took such liberties with her?

A. I can't state the date. I think in 1871, when they were living on E street between 17th and 18th. I know this was the first time.

Q. Was that before or after Mr. Nailor left home and went to live with her permanently?

A. Before.

Q. State whether you ever kissed or used other demonstrations of affection towards her about that time.

A. I did, sir.

Q. State whether you ever had sexual intercourse with her, and if so, when the first occasion was and about how frequently you had such connection afterwards, and when was the last time you had such connection.

599 A. I had, sir. The first occasion was on E street between 17th and 18th. I can't remember the date. I think it was in 1871 or 1872; I won't be positive. After that I had connection with her very frequently. The last time was on 14th street; it was a good while before Mr. Nailor died.

Q. Are you a married man?

A. I am, sir.

Q. How long have you been married?

A. I was married twice; the first time was about six years ago.

Q. Was your last association with Kate Conley before or after your last marriage?

A. Before.

Q. Do you know whether Mr. Nailor was in the house on any of the occasions when you had sexual intercourse with her?

A. I believe he was. I was told he was in the house. I didn't see him.

600 Cross-examination suspended until next session.

FRIDAY, *November* 7, 1879.

Cross-examination by Mr. CARRINGTON, Jr.:

Q. What business are you engaged in now?

A. I am not doing anything at the present time. I am out of employment.

Q. How long have you been out of employment?
A. A year or so; may be more; at least that much?
Q. How much longer than a year?
A. I couldn't say exactly how much longer than a year.
Q. Do you own any real or personal property; and, if so, what?
A. I do not, sir.
Q. What family have you?
A. Five or six in family.
Q. Who are they?
A. Wife and children.
Q. Can't you tell me whether it is five or six?
601 A. I can, sir.
Q. Well, do it.
A. Some of my family are living with me and some are not.
Q. How many children have you living with you at your house, and what are their ages?
A. I have six living with me at the house. I couldn't tell you now exactly their ages?
Q. What is the age of the youngest and the oldest?
A. The youngest is—I don't know as I can tell you that without reference to a book in which I have their ages set down. The youngest is two years, to the best of my knowledge. The oldest, that is at home with me, is my second wife's child, and I don't know that I can tell the age without reference to a book in which the ages are set down.
Q. Can't you state about how old he is?
602 A. I think he is somewhere in the neighborhood of sixteen or seventeen.
Q. How old is your eldest child by your present wife?
A. He is two years the 2nd of last August.
Q. By what means do you support yourself and family?
A. My wife owns a house.
Q. What rent does that yield and where is it situated?
A. It is situated at 1359 Ohio avenue. I have rented it for thirty dollars a month. Part of it now rents for $20 a month, and I live in the other part. I have lived in that house—I moved out of it once and went elsewhere renting rooms; I moved back into the house two years ago.
Q. To whom do you rent a portion of the house at present, and for what purpose?
603 A. I rent a portion of the house to Mr. Goshin and son. I have a shed which I rent out to a colored woman now for $4 a month, or rather a dollar a week. They live in the portions I rent.
Q. How long did you carry on the grocery business in your own name?
A. I have carried on the grocery business in my own name in Mr. Hunter's house; I don't know exactly how long; a year, I suppose.
Q. What year?

A. I can't give the year exactly; I have receipts for rent which will show what year; I haven't them with me.

Q. Was it in 1875 or 1878?

A. I don't know about 1875; I know it wasn't in 1878. Mr. Hunter's receits will show.

Q. Was it before or after 1875?

A. That I can't say; the receipts will show that.

Q. Where else did you carry on business in your own name?

604 A. Nowheres, except where I live now; I sell wood and coal there.

Q. In what year did you first meet Kate Conley?

A. I met her in 1870 or 1871, I think; I think it was 1870; I am most sure it was 1870.

Q. Where were you living and what were you doing at that time?

A. I was living on corner of 13½ and D street-; I was in the grocery business.

Q. Do you mean keeping grocery yourself?

A. Not for myself; I was working for Mr. Burke.

Q. How long before that time had you been working for Mr. Burke, and how long after that was it that you left him?

A. I don't know exactly; for some time before that. I worked with him up to about a month before he died.

605 Q. Can you tell me the year during which you went to work for Mr. Burke?

A. I don't remember the year; I think it was 1869.

Q. Can you tell me the year you left Mr. Burk's establishment?

A. No, sir; I cannot—not at the present time.

Q. How many years were you in Mr. Burk's employ?

A. About a year or over. I have a memorandum at home from which I can get those things.

Q. How long had you been working at Mr. Burk's before you met Kate Conley?

A. I couldn't tell that; I met her during the time.

Q. What fixes in your mind the year in which you met her?

A. It was such a peculiar meeting it could hardly escape my mind.

606 Q. In what month of the year was it and upon what day of the week?

A. I can't tell that.

Q. Was it in the morning or evening?

A. I think it was in the evening when I first met her.

Q. I want to know certainly whether it was morning or evening.

A. To the best of my belief it was evening.

Q. Can't you be certain of it?

A. No, sir; I cannot.

Q. What hour was it?

A. I don't know what time in the evening it was. I took no notice of the time.

Q. State how and where you met her and what occurred at the meeting, fully and in detail.

A. I waited on her and Mr. Nailor with two glasses of beer. The first place I ever met her was in a lager-beer saloon kept by
607 Mr. Eisenbeis on Pennsylvania avenue between 12th and 13th. I was tending bar there at the time, and they were in the back room. I brought the beer into them, and that's all I know about it on that occasion.

Q. What was there peculiar in that to impress the day upon your mind?

A. Because I knew Mr. Nailor and all his family, and *seen* him in there with a young woman I was surprised.

Q. Had he ever been in your place before with women?

A. No, sir; none others.

Q. When did Kate Conley go to live on 14th street?

A. I don't know the date. I didn't keep an account of it.

Q. When do you think it was?

A. I can't say. I remember the circumstance, but I have no recollection of the dates.

Q. How long did she live there?

A. I don't know, sir.

Q. When did she move to 12th street?

608 A. I don't know, sir.

Q. How long did she live on E street?

A. I don't know how long she lived there; some time.

Q. Between what years did she live on E street?

A. I can't say what years.

Q. Who lived with her on E street?

A. Some women. I don't know who she was. Mr. Nailor was there on E street.

Q. How many times did you visit them on E street?

A. I visited them a good many times. I never counted or made a memorandum.

Q. Was it there you first had sexual intercourse with Kate Conley?

A. It was.

Q. What year was that?

A. 1870 or 1871, I think.

Q. Which was it—1870 or 1871?

A. I think it was 1871.

Q. What month of the year was it?

A. I don't know what month it was.

609 Q. How long before that was it that you became acquainted with Kate Conley?

A. I don't know exactly; some time—a year or more.

Q. Had you been intimately acquainted with her?

A. Yes, sir.

Q. Intimately acquainted with her for how long a time previous?

A. A year before that, I think.

Q. How long was it between the time that you put your hand upon her person and first kissed her up to the time you first had sexual intercourse with her?

A. It was the same day; I kissed her many a time before I had connection with her.

Q. How many times did you have sexual intercourse with her during the time she lived on E street?

A. I can't tell; I didn't keep any memorandum; a good many times, though.

Q. How often were you in the habit of going there?

610 A. Mr. Nailor sent me there at least twice a week, and I went there twice a week on my own account.

Q. Where were you employed at that time?

A. 13½ and D streets.

Q. With whom?

A. John Burk.

Q. How many times did you have sexual intercourse with her on 14th street?

A. Can't tell how many times; I took no memorandum of it.

Q. How many times on 12th street?

A. That I can't tell either.

Q. Was it frequently?

A. No, sir; not on 12th street.

Q. You mean as it was on 14th and on E street-?

A. That's what I mean; yes, sir.

Q. When was the last time you had intercourse with her?

A. Can't tell that, sir, day nor date.

Q. Do you know Margaret Riley?

A. No, sir; not by name.

611 Q. Have you never known such a person?

A. Not by name; I may know her if I should see her.

Q. Were you ever at Jackson City, the Virginia terminus of the Long bridge?

A. I was.

Q. Did you ever meet Mrs. Margaret Riley, the mother-in-law of Patrick Hynes, there?

A. I met the mother-in-law of Patrick Hynes there.

Q. Do you mean to say that you didn't know her name and don't know it now?

A. I knew her name was Riley, but I didn't know it was Margaret Riley.

Q. Were you there on Sunday afternoon some three or four years ago?

A. I may have been; I don't know; I was over there often.

Q. Do you remember, upon the occasion to which I refer, a woman coming into the room where you and Mrs. Riley were sitting

612 accompanied by two children, and after she had gone Mrs. Riley asking you if you didn't know who that was, she saying that it was Kate Conley, and you said, "No, I have never seen her before," or words to that effect?

A. No, sir.

Q. What colored hair and eyes has Kate Conley?

A. I don't know exactly. I think they are black, what I call black.

Q. How long have you known Patrick Hynes?
A. I have known him near about twenty years.
Q. How long had you known him at the time he applied for his naturalization papers and you testified as his witness?
A. That I don't know.
Q. Did Allison Nailor ever accuse you of stealing a watch from him?
A. He did, sir.
Q. When did you stop working for the New York bakery?
613 A. I don't know the day or year.
Q. For what reason were you discharged from its employ?
A. I never was discharged.
Q. Did John Burk discharge you; and, if so, for what?
A. He never did.
Q. Can you describe the house on 14th street where Kate Conley lived, the inside arrangement?
A. I can describe the down-stairs part. There were three rooms on the floor—bar-room, middle sitting-room, and back room kitchen.
Q. I ask you at the time she lived there.
A. No, sir; not at the time she lived there.
Q. Describe it when she lived there.
A. The front room was the parlor or sitting-room; the back room was a kitchen; cooking utensils were there.
Q. Was there a hall?
614 A. No, sir; not that I see. I didn't go in the hallway.
Q. How did you reach the upstairs?
A. I never was upstairs.
Q. Can you describe the house on E street, upstairs or down? And, if so, do it.
A. I can describe the down-stairs. I never was upstairs. Down-stairs there was a store in front; there was a middle room back of the store, and a small kitchen back of that.

Redirect by Capt. COLE:

Q. Look at the paper now shown you, and say if you ever saw it before.
A. I have seen it.
Q. Where did you get it?
A. Two young men brought it to my door.
Q. Did you know the young men?
A. No, sir; I did not.
Q. When did you receive it?
A. I think it was Monday or Tuesday night last.
615 Q. Do you know the man whose name purports to be signed to it?
A. I do, sir.
Q. Did you know him at the time you received the letter?
A. I did, sir.
Q. Where does he live?
A. He lives on the Island, and works in this restaurant.
Q. What restaurant do you mean?

A. The restaurant that's in the house where Mr. Nailor and Kate Conley lived in.

Q. Who keeps that restaurant now?

A. Mr. Daly.

Q. Who claims to own the property where the restaurant is situated?

A. Kate Conley do, I think.

Q. Is it part of the property in dispute in this suit?

A. Yes, sir.

Q. Did you go to see Mr. O'Leary as requested in this letter?

A. No, sir; I did not; not at the time mentioned in the letter, but next day.

616 Q. Did you know before you went to see him what he wanted of you?

A. No, sir.

Q. Had you any business with him?

A. No, sir.

Q. Without stating what he said when you went to see him, tell what you and he talked about on that occasion?

(Objected to by Mr. Carrington.)

A. The subject of the conversation was that Kate Conley was to take the house back, and he asked me how I would like to work for her.

(Answer objected to by defendant's counsel.)

Q. State whether you and he, on that occasion, talked about the testimony you had given in this case.

A. O'Leary didn't speak about the testimony I had given.

Q. Did you meet any one else there?

A. I did, sir; a man, they told me his name was Daly, and
617 I understood he was proprietor of the place.

Q. State whether you and Daly had any conversation about the testimony you had given in this case.

A. Yes, sir; he spoke to me about it.

Q. Who mentioned it first, you or he?

A. He did, sir.

(The paper referred to by the witness is here filed and marked P. McN., No. I, and will be found set out at page 707 of the testimony.)

Q. Are you acquainted with the handwriting of Daniel O'Leary?

A. Yes, sir.

Q. Ever see him write?

A. Some; I have seen him; he writes very little; hardly his own name.

Q. State whether the paper just filed is in his handwriting.

A. No, sir; I don't think it is.

Q. State whether the letter was referred to on the occasion of your visit there.

A. It was.

Q. Who spoke about it?
A. O'Leary referred to it.
Q. Did Daly?
A. Yes, sir.

618 Q. State whether Mr. Nailor was living at home when you first had sexal intercourse with Kate Conley on E street, between 17th and 18th streets.

A. He was, sir.
Q. When did you last have sexual intercourse with her?
A. I couldn't tell the time.
Q. When were you married the last time?
A. In September, 1874, I think.
Q. How long before that was it that you last had intercourse with Kate Conley; about how long?
A. About a month.
Q. On cross-examination Mr. Carrington asks how many times you had intercourse with her on 12th street, to which you answer that: "I can't tell." Please state whether you ever had intercourse with her on 12th street.

(Objected to.)

A. I don't think I ever had on 12th street.

619 (All testimony in relation to the latter objected to by counsel for defendant.)

PATRICK McNAMARA.

Subscribed and sworn to before me this 7th day of November, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

Deposition of George R. Hall for Complainants. (*Filed Jan.* 13, 1881.)

GEORGE R. HALL, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

Q. How long have you resided in Washington?
A. All my life, forty-nine years.
Q. What is your present occupation?
A. Carriage making.

620 Q. How long have you been engaged in that business?
A. Thirty years.
Q. Did you know Allison Nailor, Sr., in his lifetime?
A. Yes, sir.
Q. How long did you know him?
A. Twenty-five years.
Q. About how intimately did you know him?
A. I was a tenant of his for twelve or fifteen years, and I saw him every day or week. I knew him intimately.

Q. What sort of a man was he and what were his habits in reference to the use of intoxicating liquors when you first knew him?

A. He was always a drinking man, but when I first knew him he was a man who would take his frolics once a month, but in late years he was drunk all the time.

Q. When you first knew him what sort of a business man was he?

621 A. Very good; a smart, shrewd business man.

Q. How was he in this regard towards the last of his life?

A. He became loose and careless. He hadn't that firmness that he used to have; he was broken down in mind.

Q. How long before his death was he in this condition?

A. I should think eight or ten years.

Q. How often did you see him during that time?

A. I would see him sometimes every day, and when he was out every week.

Q. You talked with him frequently?

A. Yes.

Q. During the last eight or ten years of his life what were his habits about drinking?

A. He was more or less under the influence of liquor. He might be off for a week, and then he would be on for two or three weeks.

622 Q. State whether he became demented or weak mentally towards the last of his life.

A. I should think so. I should think he became weak in his mind and physically feeble.

Q. What was his condition towards the last of his life, as compared with what it was when you first knew him?

A. Oh, he was nothing like the man, either in body or mind.

Q. State whether the change in him was a marked one or not.

A. Very noticeable; easily seen.

Q. State whether, in your opinion, he was competent to transact important business; sell, convey, or otherwise dispose of real estate understandingly, say in the spring of 1878, six months or such a matter before his death?

A. I think not.

Q. How long, in your opinion, was he so incompetent before he died?

623 A. I could hardly say. I might say three or four years.

Cross-examined by Mr. CARRINGTON:

Q. Where would you see Mr. Nailor?

A. He would stop in the shop.

Q. For what purpose?

A. sometimes to see about having something done to his buggy; sometimes a social call; sometimes one thing and sometimes another.

Q. Would he converse upon various subjects with you?

A. Well, no; he would pass the time of day and speak about some little trifling thing; something like that.

Q. Did any conversation you ever had with him make a decided impression upon your mind? And if so, repeat it.

A. No; I don't know of anything to make an impression. I recollect no particular conversation.

624 Q. How long would he stay at your shop?

A. Sometimes a few minutes and sometimes longer.

Q. Did you have any business transactions with him during the last three years of his life?

A. I done work for him and had an account against him.

Q. Did he pay it?

A. I haven't presented the bill to the estate yet; it hasn't been settled.

Q. Did you find it an easy matter to get money out of him?

A. I was a tenant of his and was owing him rent, and our accounts haven't been settled yet.

Q. Did he show any want of shrewdness in his transactions with you; and, if so, what?

A. I can't say that he did.

625 Q. Was he intoxicated every time he came to your place of business during the last three years of his life?

A. No.

Q. Was he not what you would call a drinking man—that is to say, one who would drink some liquor every day?

A. I think he was.

Q. Did it not take a large quantity of liquor to render him so much intoxicated or stupid as to render him ignorant of what he was doing?

A. I think the last few years of his life that very little liquor would put him in that condition.

Q. When and where did you see him so much under the influence of liquor as not to know what he was doing; under what circumstances and who was present?

626 A. I have seen him about the streets; E street, 13½ street, and about there where he was in the habit of going. We take it for granted that when a man is drunk he don't know what he is doing.

GEO. R. HALL.

Subscribed and sworn to before me this 31st day of October, 1879

IRVING WILLIAMSON,
Examiner in Chancery.

Deposition of Joseph Y. Potts for Complainants. (*Filed Jan.* 13, 1881.)

NOVEMBER 7, 1879.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and Gen'l Rutherford and E. C. Carrington, Jr., for defendants; whereupon JOSEPH T. POTTS, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

627 By Mr. COLE:

Q. How long have you resided in Washington?

A. About twenty-four years.

Q. What is your present occupation?

A. I am associated editor of the National Republican.

Q. How long have you been thus engaged?

A. I have been on that paper over thirteen years.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. I did.

Q. About how long did you know him?

A. I was personally acquainted with him about ten years.

Q. Did you see anything of him before you became personally acquainted with him?

A. I merely saw him as I saw other business men.

Q. About how intimately did you know him during the ten years above mentioned?

628 A. For the last five or six years I saw a great deal of him; very frequently saw him. I was quite intimate with his sons, and used to be at the stables a good deal, and he was there from day to day.

Q. State whether you frequently conversed with him or heard him converse with others during the five or six years above mentioned.

A. Yes; I have conversed with him and heard him converse with others.

Q. Please give as accurate a description as you can of his mental and physical condition and appearance during that time.

A. When I was first personally acquainted with him his physical health seemed very good and his mind was clear. He attended to his business affairs and seemed to be a pretty smart business

629 man. Probably after I had known him five or six years I noticed that he was drinking pretty hard and I saw him at times very drunk. On two occasions that I can remember I went with his son, Mr. Wash. Nailor, to find him and get him home. We found him on one of those occasions in a very low house on Ohio avenue, very drunk; got him out, and succeeded in getting him home. The second time I think it was on D street, near Thirteenth-and-a-half, in a restaurant; there we found him and got him home. I went with his son on other expeditions of the same kind—I don't know how many, though—but didn't find him. I saw him afterwards on different

630 occasions, on going down through that locality called the Division, very drunk. One instance I remember in the summer—I can't recollect the year—a shower came up, and I stepped into a restaurant on the corner of 13½ and D streets. He was there drinking, and as it lightened and thundered he would utter terrible oaths and curse because it didn't stop. I went on one occasion with his son, Allison Nailor, Jr., up back of the President's House stables to a little two-story frame house, where he had gone after a spree, and was then supposed to be dying. I went there two or three

times with Mr. Nailor to take delicacies suitable to a sick
631 person. After he got out again I didn't see much of him, except at different times when he came to the stable, till down to a year or two before his death. Then he used to come to Mr. Allison Nailor, Jr.'s, house on 9th street northwest, where I was a frequent visitor, being there almost daily. He then had to have a buggy to go around in, being to- weak to do much walking. I had several conversations with him there, and he has repeatedly told me, when speaking of men who had cheated and deceived him, that they could get the best of him now, as he wasn't the man he used to be. After he stopped coming there I saw him a number of times—I don't know how many—generally south of the
632 avenue, between 13th and 14th streets and on D and E streets, and a number of times he was under the influence of drink, and after that I saw no more of him until I heard of his death.

Q. Did you see him so as to converse with him or hear him converse with others during the last year of his life, 1878?

A. Yes; I saw him and heard him converse with others in 1878; I think, down to the latter part of the spring.

Q. State whether, judging from his appearance and conversation, his mind was strong and active or weak the last year or two of his life.

A. I don't think the last six months that I saw him that his mind was either active or strong.

633 Q. What did seem to be the condition of it at that time?

A. He didn't seem able to carry a conversation and discuss the points of it like he did when I first met him; he would commence a subject and before finishing he would branch off and tell us about something he once did, things that had happened years before.

Q. If you remember any other peculiarity about his conversation or appearance, state what it was.

A. The latter part of the conversations I had with him he evidently seemed to think that everybody who had dealings with him was trying to cheat and rob him.

Q. State whether, in your opinion, the condition of Mr. Nailor's mind was such, in the spring of 1878, as to enable him to un-
634 derstandingly transact important business, such as conveying or disposing of large quantities of real estate.

A. Well, I have seen him several times when he was certainly in no condition to transact business or competent to transfer real estate.

J. Y. POTTS.

Subscribed and sworn to before me this 7th day of November, A. D. 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

Deposition of John R. Dale for Complainants. (*Filed Jan.* 13, 1881.)

JOHN R. DALE, a witness of lawful age, produced, sworn,
635 and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

Q. Where do you reside?

A. I live in the county of Washington, D. C.

Q. How long have you resided there?

A. For the last twenty years. I have known old Mr. Nailor for the last thirty or forty years.

Q. State whether your acquaintance with him continued down until time of his death.

A. Within a short time; a few months, I suppose.

Q. How often did you see him during the last ten years of his life?

A. I saw him very frequently; I would meet him on the street and converse with him; I had business with him; we dealt at the same grocery store, Mr. Morsell's, and I met him there; I was intimate with him.

636 Q. State whether you noticed any change in Mr. Nailor during the time of your acquaintance with him.

A. I noticed that he drank much harder; I don't know that he was a drinking man when I first knew him; if he was it was not perceptible?

Q. At what period of his life did he drink hardest?

A. I think it was the last.

Q. State whether the change in Mr. Nailor, towards the last of his life, from what it was when you first knew him was a considerable change or not.

A. Well, yes, as far as the effect of excessive drink is concerned, it was. I think it made him comparatively an imbecile, as far as business was concerned—as far as I could judge. I never had any intricate business with him.

637 Q. State whether, in your opinion, he was competent to convey or dispose of real estate in the spring of 1878?

A. Well, I don't suppose he was when he was under the influence of liquor, as he was when I saw him, but I don't suppose he was always in that condition.

Q. During the last two or three years of his life state what condition he was in when you saw him.

A. On many of the occasions he was hardly in a fit condition to attend to business, as I attributed to excessive drink and its effect on a man of his age. I don't mean that he was always in that condition.

JNO. R. DALE.

Subscribed and sworn to before me this 7th day of November, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned till Tuesday, Nov. 11th, 1879, at 3 o'cl'k p. m.

A. BROWNING,
Examiner.

638 *Deposition of Wesley Jordan for Complainants.* (*Filed Jan.* 13, 1881.)

TUESDAY, *November* 11*th*, 1879—3 o'cl'k p. m.

Met pursuant to agreement of counsel on either side.

Present: Counsel on both sides and witnesses; whereupon WESLEY JORDAN, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is Wesley Jordan; I reside in Washington city, and am a carriage driver.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. Yes, sir; and ever since the war.

Q. Do you know his sons?

A. Yes, sir; ever since the war.

Q. Do you know Kate Conley, the defendant in this suit?

A. Yes, when I see her.

Q. How long have you known her?

A. Since 1870.

639 Q. Did you ever see Allison Nailor, Sr., and Kate Conley together?

A. Yes, sir.

Q. How far did you live from where they lived at one time?

A. We lived on the same side of the street with a vacant lot between us.

Q. On what street was this?

A. On "E" St. between 20th and 21st.

Q. How long did they live there near you?

A. A month or two, I think.

Q. Did they or you move from that locality first?

A. They did.

Q. State if you know of Washington Nailor going to that house to get his father during the sime they lived there?

A. Yes, sir.

Q. How many times, if more than once?

A. I could not say, but I was with him once.

Q. State what occurred on that occasion?

640 A. Mr. Wash. rapped on the door. Kate Conley then looked out of the window, and he said that he had come after his father. She then said that she had him there, and "God damn you I am going to keep him here."

Q. State whether you and Mr. Wash. Nailor got into the house on that occasion, and whether he got the old man to go away with him.

A. He pushed at the door, and she says, "If you get in that door

that big dog will eat you." I left them in front and went to the back gate of the yard; the old man was coming out of the house the back way. I then whistled for Mr. Wash. Nailor, who was in front, and he came to me; we then got the old man, put him in a buggy, and took him home.

641 Q. State whether Mr. Wash. Nailor got into the house, and how, and whether he had any difficulty in getting the old gentleman to go away with him?

A. He did not get in the house. The old man heard his voice in front and then rushed to the back.

Q. When was this?

A. In the year 1870.

Q. In the day or night?

A. At night between eight (8) and nine (9) o'clock.

Q. Was this before or after the old man left home?

A. After.

Q. Did you ever go with Mr. Wash. Nailor after the old man on any other occasion?

A. Yes, sir.

Q. How often?

A. Four or five times.

Q. Where did you generally find him?

A. We never got him but the one time.

642 Q. Did you ever see Kate Conley on any other occasion when you went with Wash. after the old man?

A. No, sir.

Q. Did you ever go to the house where they were living with him?

A. Yes, sir.

Q. Did you ever hear her say anything except on the occasion you have testified to?

A. No, sir.

Cross-examined by Gen'l RUTHERFORD:

Q. Who do you work for now?

A. Leadingham and Widdecombe, livery stable keepers. I have worked for them seven or eight years, off and on. I left Mr. Wash. Nailor's employ about eight years ago.

Q. You state that the time you and Mr. Wash. Nailor found the old man in the house on "E" St. was in the year 1870; what enables you to remember that date?

643 A. I know that it was in that year.

Q. Have you conversed with anybody lately upon the subject?

A. No, sir; only with Mr. Nailor.

Q. Did Mr. Nailor tell you it was in 1870?

A. No, sir; I remembered it.

Q. What month was it?

A. In the fall. I think the last fall month.

Q. Did you and Mr. Nailor both go to the front door together?
A. Yes, sir.

his
WESLEY x JORDAN.
mark.

Witness:
A. BROWNING.

Subscribed by mark and sworn to before me this 11th day of Nov., 1879.

A. BROWNING,
Examiner.

644 *Deposition of James S. Pierce for Complainants.* (*Filed Jan.* 13, 1881.)

JAMES S. PIERCE, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

I reside in this city, and am proprietor of the Imperial Hotel in this city.

Q. How long have you been running the Imperial Hotel?
A. Five years.
Q. Did you know Allison Nailor, Sr., in his lifetime?
A. Yes, sir.
Q. About how long did you know him?
A. From about five years ago up to his death.
Q. About how intimately did you know him?
A. I met him frequently and talked with him.

645 Q. Describe, as nearly as you can, his personal appearance and the condition he appeared to be in, physically and mentally, during the time you knew him?

A. Most of the time he was under the influence of liquor and would not know the next day what took place the day before, or what he had done or said.

Q. If you remember any peculiarities about his conversations please state them.

A. We were talking one day about the length of time the track had been laid on the Washington and Georgetown railroad; I asked him how long the track had been laid; he said that it had not been laid more than twelve or fourteen years. I asked him if he

646 was not mistaken, and he said, "No; I remember it, because at the time I was running coaches, and Allison, junior, was a mere baby." I asked him if he was not mistaken about Allison being a baby at the time the track was laid, and he says, "God damn you, don't you suppose I know the age of my children, one from the other?" I them made the remark to a person standing by that he was not in his right mind, but was wandering. We then talked about provisions being so cheap when he was a boy. I then asked him how many years ago that was. He said, "Oh, when I was a boy, about thirty-five years ago." About the same time I took him

into my meat-room and showed him my provisions and
647 poultry. I had some wild turkeys hanging up at the time. He wanted me to let him have one, and I told him he could for what it cost, being about ninety-five cents apiece. There was also other wild game of different kinds hanging up. After I told him the price he said, "I will take it all, as I am about to open a stall in the market." He told me to keep it until the next day, when he would send for it. The next day, late in the afternoon, I asked him if he intended to send for his game and poultry. He said that he knew nothing about any game or poultry ; that he had not seen any and had not bought any.

Q. About when were the conversations above given?

648 A. In the fall about this time three years ago.

Q. State whether the above peculiarities of conversation mentioned by you are the only ones of the kind you ever had with him, or are they merely samples or specimens of other conversations?

A. Only samples. I have conversed with him several times and always thought he was a little light in his mind.

Q. About how often did you converse with him during the time you knew him?

A. Sometimes two or three times a week, and again I might not see him for a week or ten days.

Q. What impression did his appearance and conversations have upon your mind as to his mental condition and capacity
649 to understand and comprehend matters generally, and to transact business?

A. I don't think that he was capable or responsible the most of the time.

Q. State whether in your opinion he was competent and capable in the spring of the year 1878 to understandingly dispose of real estate to the value of $25,000.00?

A. I don't think he was.

Q. State whether you ever heard Mr. Nailor say anything about Kate Conley or her children; and, if so, what he said.

A. I heard him say one day around to the stables in a very angry way, talking with a person standing and with whom he had been talking before, "I want you to keep away from my house; if
650 I catch you in there again talking to Kate and taking any liberties with her as I caught you doing last week I will break your God-damned head with this cane, if the cane is hard enough to do it. I don't want you or any of those damned long-bricked sons of bitches to come around to my house. You pretend to come around to see the young ones. I reckon you come around to see both (meaning Kate and the children). So many of you loafers are around there (meaning his house) during my absence that I have had to keep one half of you loafers who hang around this end of the 'Long bridge' so long. The neighbors will say that I had to support you damned loafers, and I reckon what they
651 say is about correct, that I have to support you and a lot of children belonging to you sons of bitches around the Long bridge."

The party he was talking to asked him what he meant in talking that way to him. Mr. Nailor replied: "I mean you and others who come to my house, watch me when I leave, and probably have a good time with Kate; and it would be a damned hard thing to tell who the young one- belong to—whether to me or some one else; but I have to support them." After some angry words between Mr. Nailor and the gentlemen he was talking to they separated.

JAMES S. PIERCE.

Subscribed and sworn to before me this 11th day of Nov., A. D. 1879.

A. BROWNING,
Examiner.

652 Adjourned until Friday, Nov. 14th, 1879, at 3 o'clock p. m.

A. BROWNING,
Examiner.

Deposition of Perry Sherwood for Complainants. (*Filed Jan.* 13, 1881.)

FRIDAY, *November* 14*th*, 1879—3 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel on either side and witnesses; whereupon PERRY SHERWOOD, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is Perry Sherwood; I reside in Montgomery county, Maryland, near the District line, and am a gardener.

Q. How long have you resided in Montgomery coun.y?

653 A. Six or seven months. I lived in the District, near Tennallytown, before that about fifteen years. I have lived in Montgomery county, Md. and the District of Columbia for thirty (30) years.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. Yes, sir. I knew him for over thirty (30) years.

Q. Did you ever do any business with him or for him?

A. Yes, sir. The first work I did for him I drove for him here about 25 or 26 years ago. I then worked for him about 12 or 18 months. Afterwards, about two years, I worked for him on his farm in Montgomery county, Md. I worked there nearly three years as manager.

Q. How frequently did you see Mr. Nailor during his life after you quit working for him?

654 A. I saw him frequently and knew him intimately up to his death.

Q. What sort of man was Mr. Nailor when you first knew him—that is, what kind of business man was he, and what were his business and other habits generally?

A. He was then as good a business man as I ever saw and attended to his business. He did not drink intoxicating liquors then.

Q. What was his appearance and condition the last few years of his life?

A. He was altogether a changed man. He drank very hard, his mind seemed to wander, and he neglected his business.

Q. About what time did you notice this change in him commence to take place?

A. About ten (10) years ago, when he moved on "E" street."

Q. How did the change begin to show itself?

655 A. If you talked business with —, he would say, "I am unfit for business to-day; some other day will do."

Q. How long before his death did he cease to do or to attend to his business?

A. I cannot say exactly, but am satisfied that for the last ten years he did not attend to much business.

Q. How often did you see him intoxicated the last ten years of his life?

A. I never saw him sober but once in that time.

Q. State whether you ever went to the house where he was living on "E" street, between 17th and 18th streets; and, if so, how frequently.

A. Yes, sir; several times. I don't think more than half a dozen times.

Q. Do you know the defendant, Kate Conley?

A. I know her when I see her.

656 Q. Did you ever see her and Mr. Nailor together?

A. Yes, sir.

Q. How often?

A. Several times. Four or five times.

Q. State whether, from your association with Mr. Nailor and knowledge of him, and from seeing him in the presence of Kate Conley, whether she had any influence over him, apparently.

A. Great influence, apparently.

Q. State whether you talked with Mr. Nailor frequently the last few years of his life.

A. Yes, sir.

Q. Without giving any of the languange of the conversations, state what were their general character.

657 A. When I would meet with him he would pass a few words with me and then go on. I don't recollect any particular language that he used for several years past.

Q. From the conversations you had with him, state whether, towards the last of his life, his mind was strong and vigorous or weak and feeble.

A. I thought it very weak and feeble.

Q. State whether, in your opinion, Mr. Nailor was competent, in the spring of the year 1878, to understandingly transfer valuable real estate by sale or otherwise.

A. I should think that he was not.

Q. How long before his death do you think he was incompetent to do so?

A. From eight (8) to ten (10) years.

Q. Do you know Mrs. Rachel Nailor, the widow of Allison Nailor, Sr.?

658 A. Yes, sir.

Q. State whether you ever saw much of her about her home when she and Mr. Nailor were living together.

A. I lived with them for considerable time, and most always seen her when I was about.

Q. State what sort of a housewife she was, and whether or not she did anything to aid or contribute to the accumulation of property by her husband.

A. I think as much so as any woman I ever saw. She attended to the dairy herself, and was as good a housewife as I ever saw.

Q. State whether you ever went for Mr. Nailor to get him to return home after he went from home to live with the Conley woman.

659 A. I did, at the request of Mrs. Nailor.

Q. How often?

A. I think two or three times at least.

Q. Did you see the Conley woman on those occasions?

A. Yes, sir.

Q. What did she say on any of those occasions, if anything?

A. She never had anything to say. I never approached Mr. Nailor in her presence.

Q. How did you do it?

A. She would be in another part of the house when I would see him.

Q. Did she know that you were trying to get him away?

A. I think she found it out, from the way she acted afterwards.

Q. How did she act?

A. She used to come [to] my stall in the market and buy provisions and poultry, but after she found out that I had been

660 after Mr. Nailor she stopped buying from me.

Cross-examination by Gen'l RUTHERFORD:

I don't think I have had any business transaction with Mr. Nailor since I stopped working on the farm and selling his stuff.

Q. You testified that Mrs. Nailor was a good housewife. How do you know this; have you ever been in her house?

A. Often, and lived in one part of the house and she in the other.

Redirect by Mr. COLE:

Q. Please describe the rooms in the lower story of the house on "E" street, between 17th and 18th streets, where Mr. Nailor and Kate Conley lived; how the rooms were arranged.

661 A. The first room was a store-room, and the last time I was in the back room there was a lounge and some chairs in it.

Q. State how Mrs. Nailor treated Mr. Nailor while he lived at home.

A. I think she was as kind and affectionate to him as she could have been.

Q. State what efforts, if any, Mrs. Nailor used to induce Mr. Nailor to return and live at home.

A. She sent for him often, and went after him herself.

PERRY SHERWOOD.

Subscribed and sworn to before me this 14th day of November, A. D. 1879.

A. BROWNING,
Examiner.

662 *Deposition of William E. Edd for Complainants.* (*Filed Jan. 13, 1881.*)

WILLIAM E. EDD, a witness produced and sworn on behalf of complainants, did depose and say as follows:

By Mr. COLE:

My name is William E. Edd; I reside in this city; and am a horse-clipper by occupation.

Q. Do you know Catharine Conley?

A. Yes, sir.

Q. How long have you known her?

A. Since the year 1874.

Q. About what time in 1874 did you make her acquaintance?

A. In the spring of the year.

Q. State whether you knew her intimately in the spring and summer of 1874.

A. Yes, sir.

Q. State whether you ever had sexual intercourse with her

663 A. Yes, sir.

Q. How often?

A. Three or four times a week for a couple of months.

Q. What months were those?

A. I think April and May, and up to July some time.

Q. Where did it occur?

A. On 14th street, where she and Mr. Nailor were living at that time.

Q. Where was Mr. Allison Nailor, Sr., at that time?

A. I do not know that.

Q. Was he at home at the house on 14th street where this occurred?

A. I should think not.

Q. Did you hear of Mr. Nailor's being away at Cape May during a part of that time?

A. He came to Cape May while I was there.

Q. When did you go to Cape May?

A. In July, about the 4th or 5th.

Q. State whether Mr. Nailor was in the city up to the time

664 that he went to Cape May.

A. I do not know.

Q. Was Mr. Nailor in the city up to the time you went to Cape May?

A. I saw him the day before I left here.
Q. About when did you return from Cape May?
A. I was gone from here for five or six weeks.
Q. Who return- first, you or Mr. Nailor?
A. I did.
Q. State whether you had sexual intercourse with Kate Conley after you returned from Cape May.
A. Yes, sir.
Q. In whose employ were you that summer?
A. Allison Nailor, Jr.
Q. Were you in his employ before you went to Cape May?
A. Yes, sir; working extra.

665 Cross-examination of this witness suspended and adjourned until Monday, Nov. 17th, 1879, at 3 o'cl'k p. m.

A. BROWNING,
Examiner.

MONDAY, *Nov. 17th*, 1879—3 o'cl'k p. m.

Met pursuant to adjournment.
Present: Counsel on either side and witnesses; whereupon the cross-examination of the witness, WILLIAM E. EDD, was commenced, as follows:

By Mr. CARRINGTON:

Q. Where are you employed now?
A. I am not doing anything now.
Q. When was the last time that you did anything?
A. I am doing something every day or so—driving hacks, trading horses, or doing anything I can get that is honorable.
Q. Where was the last place that you were employed?
666 A. At the National Fair grounds. I was considered a watchmen there in Machinery Hall.
Q. Did you ever work for any of the Nailor family; and, if so, which one?
A. For both; Mr. Wash. and Mr. Allison, Jr.
Q. How long did you work for Mr. Wash. Nailor?
A. The last time, I think about three weeks.
Q. How long for Allison Nailor, Jr.?
A. I worked extra for him a long while; I can't tell how long?
Q. Where do you reside?
A. At 109 Purdy's court, in this city.
Q. Are you married?
A. No, sir.
Q. Do you board or keep house?
A. Keep house.
Q. Who lives with you?
A. (Witness asks counsel for compl't if he need answer that question. Counsel replies that he considers the question immaterial, and says to the witness that he has the right to decline
367 or answer if he desires to do so.)

Q. Question repeated.
A. I decline to answer that.
Q. Is there any reason why you should be ashamed to answer it?

(Objected to by compl't as immaterial and improper, and counsel also thinks that is a question which the witness can answer or not as he desires.)

A. No, sir.
Q. Why do you decline to answer?

(Objected to by compl't as immaterial and improper, and it is a question which the witness is not obliged to answer.)

A. I decline to answer that.
Q. How long have you been keeping house in Purdy's court?
A. About one year.

Q. Did you ever keep house anywhere else in Washington;
668 and, if so, where?

A. Yes, sir; three or four places; it may be more.
Q. Where have you kept house, when and for how long at the different places?
A. On 7th street between D & E, where Abner's new house is now, for about two months. I think this was about one year and a half ago. And again next door to the Capital office on "D" street. I don't know the number; this was about two years ago, or it may be less. Again on 9th street, the next door to Mr. Fulton's, the pawnbrokers, on the side towards the avenue; this was within the past three years, but I cannot give the date. I don't recollect of keeping house at any other places.

Q. Which side of the Capital office do you speak of?
669 A. The side towards 10th street.

Q. With whom did you keep house at the various places?
A. I decline to answer.
Q. Why?
A. I decline to answer that.
Q. Can't you give any reason for refusing to answer those two questions?
A. I decline to answer that.
Q. Will answering those questions expose you to a criminal prosecution?

(Objected to by compl't because improper and being a question which the witness is not obliged to answer.)

A. I decline to answer that.
Q. Will answering them expose you to public contempt, contumely, or disgrace?

(Same objection by compl't.)

A. I don't think so.
Q. And you still decline to answer the question?
A. Yes, sir.

670 Q. Are you not living in Purdy's court in adultery?

(Same objection by compl't.)

A. I decline to answer that.

Q. Have you not been living in adultery at the various places that you mentioned where you kept house?

(Same objection by compl't.)

A. I decline to answer that.

Q. Have you not been living so for the last five years?

(Same objection by compl'ts.)

A. No, sir.

Q. Have you for the last four years?

(Same objection.)

A. No, sir.

Q. Have you for the last three years?

(Same objection.)

A. I decline to answer that.

Q. During what year did you go to Cape May?

A. In 1874.

Q. State when, the month and day.

A. I am pretty sure it was in July.

Q. When did you get back?

671 A. I was gone about six weeks.

Q. When did you first become acquainted with Kate Conley and under what circumstances?

A. In the spring of 1874, by going to the house?

Q. Who did you go to the house to see?

A. Carrying things there for Mr. Nailor.

Q. What Mr. Nailor?

A. Sometimes for the old gentleman and sometimes for Allison, junior.

Q. How often did you carry things for Mr. Allison, Jr., and what were they?

(Objected to by compl't as immaterial.)

A. I don't know what they were, but they were bundles.

Q. What did you take there for Mr. Nailor, Sr.?

A. Little bundles and packages. I don't know what was in them.

672 Q. How often did you go there for Mr. Nailor, Sr.?

A. I could not tell; sometimes two or three times a week, sometimes three or four times a week.

Q. How often did you carry things there for Allison, Jr.?

A. Once or twice a week, or it may be more; I could not tell.

Q. Do you mean to say that every time you took anything there you had sexual intercourse with her?

A. No, sir.

Q. How often did you go to her house on 14th street when you had sexual intercourse with her that you did not go on an errand for Allison Nailor, Sr. or Jr.?

A. I could not say; I made no memorandum of it.

Q. Were you in the habit of going there for the purpose of
673 having sexual intercourse alone; and, if so, how many times a week?

A. I dropped in there occasionally whenever I got an opportunity.

Q. How many times a week on an average?

A. I don't know, but I suppose two or three times a week.

Q. Did you continue to carry things to Kate Conley's house for Allison Nailor, Sr., and his son up to the time you left for Cape May?

A. Yes, sir.

Q. Where was Allison Nailor, Sr., living at that time?

A. On 14th street, where Kate Conley lived.

Q. Could you mention to me some of the persons you met at her house?

A. There was [an] old yellow man there; I forget his name, and also the children.

Q. How long were you in the habit of staying?

674 A. It was very quick work with me; I never tarried long unless I stopped and talked with the old gentleman when he was home.

Q. About how long?

A. I paid no attention to the time; I would go in, get what I was after, and then leave.

Q. During all this time you can't remember any one you met there?

A. No one but the colored man and children.

Q. Did she have a baby at that time?

A. There were children in the house, but I don't know whose they were.

Q. How many?

A. Sometimes one and sometimes two. I did not pay much attention to the children.

Q. How old were those children, apparantly?

675 A. I have no idea.

Q. Was one of them a nursing child?

A. I think so, but won't be positive about that.

Q. Did you ever pay her anything for her embraces?

A. No, sir.

Q. Will you describe to me the upstairs portion of that house?

A. I never was upstairs in that house.

Q. Describe the lower floor.

A. There was a back room, front room, and a little kitchen, as near as I remember.

Q. How were the rooms furnished?

A. I paid no attention to that.

Q. Where did those acts of intercourse take place?

A. In the back room sometimes, and on one occasion that I remember in the front room.

Q. Where were the children?

A. I don't know.

676 Q. Were they in any of the rooms open to your inspection?

A. I could not see them.

Q. What would she do with the children when you came there before you had intercourse with her?

A. I don't know.

Q. Do you mean to say that every time you had intercourse with her that you neither saw nor heard the children, and did not know where they were?

A. I do not.

Q. What do you mean?

A. I saw them of course when I went there, but I don't know where she put them, as I did not watch her.

Q. Then you would see them when you would go in?

A. Sometimes.

Q. Generally, or otherwise?

A. Not generally.

Q. Where is the stairway leading to the second story in that house?

677 A. I think in the back room—I mean in the middle room.

Q. Have you ever had the small-pox?

A. Yes, sir; so the doctor said.

Q. Has your nose not been broken?

A. It has been injured, but I don't know what is the matter with it.

Redirect by Mr. COLE:

Q. How long has it been since you worked for either Allison Nailor, Jr., or Washington Nailor.

A. I have not worked for Allison since I left him at Cape May in 1874; he discharged me there, and I have not worked for Washington for about three or four years except occasional jobs.

Q. Did you ever reside on 14th street, near the "Long bridge;" if so, when?

A. Yes, sir; in 1874, before I went to Cape May.

Q. About how old are you?

A. About thirty-eight.

his
WILLIAM E. x EDD.
mark.

Witness:
A. BROWNING.

678 Adjourned until Friday, Nov. 21st, at 3 o'clock p. m.

A. BROWNING,
Examiner.

Deposition of Richard T. Brown for Complainants. (*Filed Jan.* 13, 1881.)

FRIDAY, *November* 21, 1879.

Met pursuant to adjournment.

Present: C. C. Cole, E'q., for complainants, and E. C. Carrington, Jr., for defendant; whereupon RICHARD T. BROWN, a witness of lawful age, produced, sworn, and examined by and in behalf of the complainants, deposes as follows:

By Mr. COLE:

Q. Where do you reside?

A. 614 K street, Washington, D. C.

Q. How long have you resided in Washington?

679 A. All my life, except the time I was in the army and working in Baltimore. I consider it my home.

Q. What is your present occupation?

A. I am employed in the market every other day most. I go there.

Q. Are you acquainted with Catharine Conley, the defendant in this suit?

A. Yes, sir.

Q. How long have you known her?

A. I first got acquainted with her in 1874.

Q. Where did you first make her acquaintance?

A. In the Washington market.

Q. How did you happen to meet her there?

A. I was selling stuff; helping my mother to sell produce there.

Q. How did she happen to be in the market?

A. She was buying stuff there.

Q. Did you ever go to the house where she lives?

A. Yes, sir.

Q. How often?

680 A. I couldn't say how often I went there.

Q. A good many times, or not?

A. Considerable times, I guess.

Q. About how intimate have you been with her since you knew her?

A. About as intimate as a man could be, I suppose.

Q. State whether you ever had sexual intercourse with her?

A. I have.

Q. About how frequently?

A. I couldn't say; occasionally.

Q. When did you have the first act with her?

A. This was in 1874, to the best of my recollection.

Q. Where?

A. On 14th street.

Q. Where she lived?

A. Yes, sir.

Q. When did you have the last intercourse with her?

A. In 1875; the fall of the year. I don't know the month.

Q. Where was that?

681 A. Same place.

Q. Did you ever have intercourse with her at any other place except in that house?

A. No, sir.

Q. How old are you?

A. Thirty-five.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. Yes, sir; I knew him by sight; I never had much conversation with him.

Q. Did you ever see him about that house where Kate Conley lived, when you went there?

A. Yes, sir.

Adjourned until Monday next at 3 p. m.

MONDAY, *Nov.* 24, 1879.

Met pursuant to adjournment.

Whereupon the witness, RICHARD T. BROWN, is cross-examined.

By Mr. CARRINGTON, Jr.:

Q. How long were you in the army and in what capacity?

682 A. I was a private soldier and cook for officer's mess, at Fort Stevenson, Dakota Territory; I was in the army—I couldn't say exactly how long unless I had my discharge here.

Q. How long have you been in Washington since you left the army?

A. I have been here since 1872, except for about nine months.

Q. How long did you work in Baltimore and between what dates?

A. I worked there from about Nov., 1872, until September, 1873, to the best of my recollection.

Q. What have you been doing in Washington since that date?

A. The first place I worked after that was under Gen'l Babcock; after that for Mr. Lucky, out to the new jail; he was head boss

683 there; after that I worked in the navy yard; after that at the post office, in the blacksmith shop; after that again at General Babcock's works; after that at Soldier's Home grounds; then I worked for the District Commissioners; and that's about all I can say, except attending at market.

Q. How long have you been attending at market?

A. Off and on ever since I have been home, when I was out of employment, between on- job and another.

Q. How long have you been there since your last job?

A. I couldn't say exactly.

Q. About how long?

A. I have been there, often and on, for about three months, to the best of my opinion.

Q. What wages do you receive for attending there?

684 A. I don't receive no particular wages; I attend there for my mother; I am living with my mother.

Q. Do you receive anything; and, if so, what?

A. I receive my board; that is my home. I do it as a favor for my mother. I have always a home with my mother.

Q. What inducement, if any, was given you to testify in this case?

A. I don't know any particular inducement, except I was to have a dollar and a quarter a day, the rates at the court—what is allowed at the court.

Q. No promise of work, of money, or other gratuity besides what you have mentioned?

A. None as I know of.

Q. Who did you tell that you had sexual intercourse with Kate Conley?

685 A. The only one I know that I told outside of the evidence I gave in here the other day was Mr. Washington Nailor and James W. Boswell. I don't remember of telling any other party. Naturally when a man is in business like that he aint going to tell everybody.

Q. Who is Mr. Boswell, and when did you tell him?

A. He is James W. Boswell, that's all I know; he is a half brother of mine. I told him about the same day I had sexual intercourse with her the first time.

Q. Where is he now?

A. He is dead; he died two years ago the 5th of this November

Q. When did you tell Washington Nailor?

A. I told him last summer.

Q. Did he come to see you or you go to see him?

686 A. I didn't go particularly to see him, but I met Mr. Nailor on 13th & a half street. I was with a man named Cox—John C. Cox—and I heard something about the Nailor case, and they were talking together, and he introduced me to Mr. Nailor, and then I taken Mr. Cox aside and told him that this woman, Kate Conley, was a common woman, and that I knew it. I told him that I had sexual intercourse with her often; and then Mr. Cox was talking to Mr. Nailor, and then Mr. Nailor asked me if I would be willing to testify to that effect, and I told him I would, and he got my address, and I never heard nothing from him until I heard he had left word for me to come up here. I never had any

687 conversation with him on the subject since that circumstance

Q. Are you and Cox friends?

A. No particular friends.

Q. Did you know him well before that day?

A. Didn't know him well before that. I knew him to speak to, but as to his business I knew nothing about that, only that he kept an office and represented himself as a lawyer; whether he was or not I can't say, but I have been in the office and heard parties call him Judge Cox.

Q. Was he not hunting up witnesses in the Nailor case?

A. Not as I know of.

Q. Did he not tell you that it would be to your interest to testify?

688 A. No, sir; he did not, except the $1.25 per day.

Q. How many children did Kate Conley have at the time you visited her?

A. I couldn't say, sir.

Q. Did she have any?

A. Yes, sir; according to what she said. I don't know whether they were her children or not.

Q. How many children did you see at the house?

A. I have seen two there.

Q. Give their ages at that time?

A. Couldn't give their ages.

Q. Give us some idea upon the subject.

A. That's something I couldn't do, except one might have been about two; the other might have been about four. As for ages I am no judge, but that is the best of my opinion. Whether the children were hers or not I couldn't say.

Q. Were they girls or boys?

689 A. One looked to be a girl; the other looked to be a boy.

Q. At what hour were you in the habit of going to the house?

A. I had no particular hour to go to the house.

Q. What was the usual hour?

A. I had no usual hour to go there.

Q. Did you go during the night or day?

A. Day.

Q. Have you been there at all hours of the day?

A. I couldn't say that I have all hours of the day.

Q. What hours?

A. I couldn't say the particular hours that I have been there.

Q. Have you been there at seven, eight, nine, or ten o'clock?

A. Yes, sir; I have been there between nine and ten, to the best of my opinion.

Q. Eleven, twelve, one o'clock?

690 A. I had no particular hour to go there, only through the daytime I went there.

Q. Were you ever there later than three o'clock; and, if so, how often?

A. I could not say how often.

Q. Did you go there more frequently in the morning than in the afternoon?

A. More frequently in the morning.

Q. How many times do you suppose you had sexual intercourse with her?

A. I couldn't say, sir.

Q. To the best of your knowledge.

A. To the best of my knowledge, between twenty and thirty times.

Q. Mention the persons you met at the house?

A. I met old man Nailor there one time, and I met some lady there. I saw this lady in the house.

Q. Who was this lady and and how often did you see her there?

691 A. I don't know her name. I couldn't say how often I saw her there; several times, though.

Q. Describe her appearance.

A. This has been some time ago—four or five years ago—and I can hardly describe her appearance now.

Q. Where did these acts of intercourse occur?

A. In the back room—the next room to the front room.

Q. Anybody in the kitchen or parlor?

A. I didn't see nobody there.

Q. Where were the children?

A. The children was upstairs, to the best of my opinion; or they might have been out in the yard once or twice when I was there.

Q. How do you know they were upstairs?

A. I have seen her send them upstairs.

692 Q. How often?

A. I couldn't say how often.

Q. Have you ever been upstairs?

A. No, sir.

Q. Where is the stair case to the second story in that house.

A. That goes up from the back room, in the B-street side of the house—that is, on the south side of the house — it appeareed, in that house.

Q. Are you married?

A. Yes, sir.

Q. How long have you been married?

A. About twelve years.

Q. Have you any children, or ever had any?

A. Had no children by my wife.

RICHARD T. BROWN.

Subscribed and sworn to before me this 24th day of November, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

693 *Deposition of Mary L. Reed (Sister to the Complainant, Rachel D. Nailor) for Complainants.* (*Filed Jan.* 13, 1881.)

NOVEMBER 24, 1879.

Met to take testimony for complainants.

Present: C. C. Cole, Esq., for complainants, and E. C. Carrington, Jr., for defendant; whereupon MARY L. REED, a witness of lawful age, produced, sworn, and examined by and in behalf of complainants, deposes as follows:

By Mr. COLE:

Q. Where do you reside?

A. 902 M street, Washington, D. C.

Q. Did you know Allison Nailor, Sr., in his lifetime, and Rachel D. Nailor, his widow?

A. Yes, sir; I knew them for thirty-five years.

Q. What relation are you to his widow, Rachel D. Nailor?

694 A. I am her sister.

Q. State whether you were present at the marriage of your sister to Mr. Nailor.

A. Yes, sir; I was present.

Q. When and where did it occur?

A. In 1835, April 23d, in Montgomery county, Maryland.

Q. Who performed the ceremony?

A. Rev. Dr. Tippett, of Georgetown, D. C.

Q. Was he acting at that time as a minister of the gospel; and, if so, what denomination?

A. He was stationed at the Georgetown Methodist Episcopal church at that time.

Q. State whether Mr. and Mrs. Nailor lived together as man and wife after that marriage.

A. Yes, sir.

Q. How long?

A. Well, they lived together until the trouble came up, when he went to live with Kate Conley. I don't remember just when that was.

695 Q. How many children had Mrs. Nailor by that marriage?

A. I think she had ten.

Q. How many of them were living at the date of Mr. Nailor's death?

A. There was four living then, two sons and two daughters.

Q. What are their names?

A. Allison Nailor; Rachel E. Trimble, wife of Matthew Trimble; Washington T. Nailor, and Marion Francis Clark, wife of James Clark. These four children were all living at the time of Mr. Nailor's death, and, so far as I know, are all living now.

Q. State whether any of the children of Mr. and Mrs. Nailor who have died left any children surviving them.

A. No; none at all. They all died young with the scarlet fever.

MARY L. REED.

Subscribed and sworn to before me this 24th day of November, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

696 *Deposition of Matthew Trimble (recalled), One of the Complainants.* (*Filed Jan.* 13, 1881.)

SATURDAY, *Nov.* 29*th*, 1879—3 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel on either side and witnesses; whereupon MATTHEW TRIMBLE, a witness for complainants, was recalled, resworn, and testified as follows:

By Mr. COLE:

Q. At or about the time of the death of Allison Nailor, Sr., where were you?

A. At No. 614 on 13th street northwest, in this city.

Q. Had you been about home for some time previous to his death?

A. I remained in my office all that morning until I heard of his death. I was there all the fall and winter preceding his death.

697 Q. About how frequently were you in the house in which Mrs. Nailor, your mother-in-law, resided, and about how often did you see her, say for the last six weeks prior to Mr. Nailor's death?

A. I was in her house every day, sometimes a half a dozen times a day, and she was in my house quite as frequently, and in the evening either myself and family were in her house, or she was in ours.

Q. How long before Mr. Nailor's death did you first hear that he was sick or confined to the house, and how did you first learn of his last sickness?

A. To the best of my recollection it was on a Sunday, the day preceding his death, and the information was given to me by

698 Washington T. Nailor, the son of the deceased.

Q. How long before his death did you hear his wife speak of his being seriously ill?

A. The day before his death.

Q. If you know, state how and when she first heard of his last illness?

A. I think she received her knowledge from the same source that I did, and at about the same time.

(Counsel for defendant objects to the whole of the testimony of this witness as irrelevant and immaterial.)

Cross-examination by Mr. THOMPSON:

Q. Do you know whether or not Mr. Wash. Nailor or Mr. Thomas E. France, or either one of them, had been to see Mr. Nailor at the place where he died several days before he died?

699 A. I do not know that they were there — days before he died. I heard that they were there on the Sunday I alluded to. I knew where Mr. Nailor died, and if I had been particularly anxious to know about his health I knew where to go to inquire; his health was a matter of as a father-in-law's health would be to any other son-in-law. I was not surprised not to hear of his illness, because I had heard of his sickness on other occasions when others of the family did not hear of it.

Q. Any member of the family could have heard upon inquiry of the state of his health, could they not?

A. I believe so.

M. TRIMBLE.

Subscribed and sworn to before me this 29th day of Nov., 1879.

A. BROWNING,
Examiner.

700 *Deposition of Washington T. Nailor (recalled), One of the Complainants.* (*Filed Jan.* 13, 1881.)

WASHINGTON T. NAILOR, recalled and examined by Mr. COLE:

Q. Where did you reside for the last three months of your father's life?

A. Either at No. 612 on 13th street, my mother's house, or at the Imperial Hotel; upon reflection I say that I lived at my mother's house.

Q. When and how did you first hear of the last sickness of your father?

A. Accidently, through Mr. Thomas E. France, on Saturday, two days before he died.

Q. When and how did your mother first hear of it?

701 A. I told her on January the 4th that he was very sick, and asked her what I should do. I then went to see Dr. Hammett, who I heard was his attending physician, and told the doctor that I would like to call in some other physician to consult with him, and he consented, and I called in Dr. Buckley, and he had a consultation with Dr. Hammett the same night. When I first went to the house on Saturday, which was as soon as I heard he was sick, my father was unconscious and could not speak.

Q. State whether the defendant ever sent you or any other member of the family, to your knowledge, any word that the old gentleman was sick, on that occasion or on any other, while he was living with her.

A. She did not.

702 The counsel for the complainants now offer in evidence the records of this court, holding a criminal term, in the cases of the United states against Catharine Conley, No. 8633; and the District of Columbia against Catharine — and Allison Nailor, surety, No. 9160; and the case of the District of Columbia against the same parties, No. 9161, and files with the examiner certified copies of the minute-book in said causes, which are marked Compl'ts' Exhibits Nos. 1 and 2, and herewith returned, and the said exhibits will be found set out at pages 707, 708, 709, & 710 of the testimony.

Counsel for defendant objects to the records above referred to as irrelevant and immaterial, as the defendant is not on trial for any criminal offence, and because it goes to show the animus of the complainants.

The above exhibits, Nos. 1 & 2, will be found set out at page —.

703 Q. State whether you were in court when either of the above cases were tried, and who is the person mentioned therein as Catharine Conley?

A. I was in court when each of them were tried, and she is the same person mentioned as defendant in this suit, and the Allison Nailor mentioned there is my father.

Cross-examined by Mr. THOMPSON:

Q. You knew where Allison Nailor, Sr., resided before he died?

A. I did.

Q. You were on good terms with him immediately before he died, were you not?

A. I was.

Q. Your mother also knew where he resided before he died, did she not?

A. She did.

Q. If you or your mother had been particularly interested
704 as regards the state of his health you could very easily have found out upon inquiry, could you not?

A. I could not have found out without having trouble with this harlot, and my mother would not go to such places, and even if she had this harlot would not have told her.

Q. Did you ever, individually, make the attempt to find out about his health?

A. I have by inquiry, but on this occasion I did not know he was sick until he was dying.

Q. Upon whose complaint, if you know, was Catharine Conley arrested in the cases cited in the exhibits filed here?

A. In cases 9160 and 9161 the records of the court will show, as also in case No. 8633.

705 Q. Question repeated.

A. I do not know; I know I did not.

WASHINGTON T. NAILOR.

Sworn to this 29th of Nov. 1879, before me.

A. BROWNING,
Examiner.

Counsel for the complainants now offer in evidence, for all purposes for which the same may be admissible, the record in equity cause No. 3282, lately pending in this court, wherein Rachel D. Nailor was complainant and Allison Nailor was defendant.

Record is objected to generally by defendant.

Counsel for complainants here announces that the testi-
706 mony-in-chief on behalf of complainants is closed before the examiner, reserving the right to produce for cross-examination the witness Jacob Poss at any time when it may be convenient for counsel on both sides, and also reserving the right to take the deposition of James W. Clark and wife, who are residents of the State of Texas, under interrogatories to be filed under the rule of court.

Counsel for defendant agrees to the proposition of the counsel for complainant, upon the condition that that is all the testimony required by him, and that it will be furnished as soon as possible.

Counsel for complainant says that it is satisfactory to him, and he will file the interrogatories as soon as possible.

A. BROWNING,
Examiner.

707 *Complainant's Exhibit P. McN., No. I.* (*Filed Jan.* 13, 1881.)

WASHINGTON, D. C., *Nov. 4th*, 1879.

Mr. Patrick McNamara.

DEAR SIR: I would like to see you this evening, if possibble, as I have something to your interest to tell you; do not fail to come as soon as you can. By so doing you will oblige

Your friend,

DANIEL O'LEARY.

To No. 227 14th St. S. west.

Complainant's Exhibit No. 1. (*Filed Jan.* 13, 1881.)

In the Supreme Court of the District of Columbia, holding a Criminal Court. June Term, 1870.

708 UNITED STATES *vs.* CATHARINE CONLY. } No. 8633.

1870, Aug't 20. Appeal from police court. Information for keeping a disorderly house.

1870, Dec. 28. Jury sworn; verdict, guilty; sentenced to pay a fine of $100, and to be committed to the custody of marshal till the fine is paid.

A true copy of the docket entries in above case.

Test: R. J. MEIGS, *Clerk*,

[SEAL.] By J. JOY CAMP, *Ass't Clerk.*

Complainants' Exhibit No. 2. (*Filed Jan.* 13, 1881.)

Supreme Court of the District of Columbia, holding a Criminal Court. June Term, 1871.

709 DISTRICT OF COLUMBIA *vs.* CATHARINE CONLEY, ALLISON NAILOR, Surety. } 9160.

Nov. 15. Appeal from the police court. Information for selling liquor without license. Docketed by appellee. Judgment of police court affirmed, and judgment against appellant and defendant and her surety for $20 fine & the costs of this court.

Dec. 2. *Fi. fa.*

1872, Jan'y 20. Stisfied pl'ff's attorney per receipt on writ.

DISTRICT OF COLUMBIA *vs.* CATHARINE CONLEY, ALLISON NAILOR, Surety. } 9161.

Nov. 15. Appeal from the police court. Information for
710 keeping her place of business open on Sunday. Docketed by appellee. Judgment of police court affirmed, and judgment

against appellant and defendant and her surety for $20 fine and the costs of this court.

Dec. 2. *Fi. fa.*

1872, Jan'y 23. Satisfied pl'ff's attorney for receipt on writ.

A true copy of docket entries in the above-entitled cases.

Nov. 28, 1879.

R. J. MEIGS, *Clerk*,
[SEAL.] By B. P. SPARROW,
Ass't Clerk.

711 *Certificate of Examiner in Chancery.*

Supreme Court of the District of Columbia. Equity.

RACHEL A. NAILOR *et al.*
vs.
CATHARINE CONLEY. } No. —.

Be it remembered that at an examination of witnesses begun and held on December 16, 1879, and continued from time to time by adjournment, when the within depositions were taken, I, Irving Williamson, examiner in chancery, did cause to be personally present at my office in Washington city, District of Columbia, the within-named witnesses to testify in behalf of the defendant in a certain cause now depending in the supreme court of the District of Columbia, wherein Rachel A. Nailor and others are complainants and Catharine Conley is defendant, said testimony being contained in 584 pages, and put up in three separate volumes, marked, respectively, No. 1, 2, and 3.

IRVING WILLIAMSON,
Examiner in Chancery.

712 *Testimony for Defendant.*

Deposition of Howard H. Barker for Defendant. (Filed Jan. 13, 1881.)

Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } No. 6658.

DECEMBER 16, 1879.

Met pursuant to agreement of counsel to take testimony by and in behalf of the defendant in the above-entitled cause.

Present: C. C. Cole, Esq., solicitor for complainants, and E. C. Carrington, Jr., and Charles Thompson, Jr., solicitors for defendant; whereupon HOWARD H. BARKER, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes as follows:

By Mr. CARRINGTON:

Q. State your residence and profession.

713 A. My residence is 1116 H street, Washington, D. C.; I am a physician.

Q. How long have you been a practicing physician in this city?

A. Since March of 1870.

Q. Did you know Allison Nailor, Sr., deceased?

A. Yes; I was slightly acquainted with him.

Q. Where did you see him, and how often?

A. I saw him at his residence on 14th street in South Washington between B and C streets. I don't know how often, probably a dozen times.

Q. For what purpose did you visit his house?

A. I visited it professionally, attending his children and Miss Conley; the children who lived there and died of scarlet fever—supposed to be his children.

Q. Did you converse with him?

A. Yes, sir; occasionally.

714 Q. On what subjects?

A. Generally spoke of the condition of the weather, the improvements of the city, the excessive taxation, and upon one occasion he gave me some reminiscences of his early experience in business.

Q. Did he ever talk of these children?

A. He sometimes spoke of them when they were sick; he spoke particularly of the little boy; of his great attachment to the little fellow, and of the little fellow's attachment to him. He expressed a great deal of anxiety as to his condition, and urged me to do all I could for him, stating that he did not mind the expense. His conversation in reference to them was generally of that nature.

715 Q. Did he make any comparison between his love for this boy and his other children?

A. Yes; upon the same occasion he said that he loved that little boy better than any of his other children.

Q. Did you see him after the death of these children, and have any conversation with him in reference to their death?

A. I saw him on one occasion, but did not converse with him in regard to their death. I merely asked him in regard to his own health; it was a few days before his death, and he did not refer to the children at all. I thought from the manner he spoke of his own feelings that he was grieving over the death of the children.

716 Q. Did you see him at any time under the influence of intoxicating liquor?

A. Not to my knowledge.

Q. What was his mental condition?

A. I thought his mind was about as sound as you will find in a man of his age.

Q. Was there any appearance of insanity or imbecility in his manner, conversation, or action?

(Objected to by Mr. Cole as leading.)

A. No; I think not.

Cross-examined by Mr. COLE:

Q. Did you ever practice medicine elsewhere than in Washington?

A. No, sir.

Q. Where did you study and graduate?

A. I studied in Washington and graduated in the Medical Department of Georgetown University.

Q. When did you graduate?

717 A. In March, 1870; March 10th, I think.

Q. When did you first see Allison Nailor, Sr.?

A. I don't recollect; probably saw him when a boy. I think I stated in my affidavit that I had known him for four months. My acquaintance with him extended about four months. His children died, I think, in August, 1878, and I had probably known him about four months previous to that; then I didn't see him any more to converse with him until the December following, when I only saw him a few minutes, which was the occasion to which I referred when I said it was only a few days before his death.

Q. How many of the children died at the time you speak of?

718 A. Two.

Q. What was their names, if you remember?

A. I think the boy's name was Willie; the other was a girl; I have forgotten her name.

Q. Did you ever attend professionally any other children at his residence than the two mentioned?

A. No, sir.

Q. Who called you to attend these?

A. A messenger; the last time a colored man; I have forgotten his name.

Q. How long were they under your professional treatment?

A. I attended them upon several occasions.

Q. How long in their last sickness?

A. I don't recollect the length of time; I can tell from my book.

Q. Did they both die near the same time?

719 A. Yes; the girl only lived a few days after the boy.

Q. Of what disease did they die?

A. Scarlet fever.

Q. Was Mr. Nailor always at the house when you went there professionally?

A. I believe I met him at nearly every visit during their last sickness.

Q. How many times do you think you conversed with him during the four months of your acquaintance?

A. I have said probably a dozen times.

Q. Were those conversations long or short?

A. All except the one were short.

Q About when was the extended conversation?

A. Just previous to the death of the little boy. I remained at the house nearly all night, and he was talking to me nearly all the time I was there.

720 Q. Was the boy dangerously ill at that time?

A. He was severely ill during the whole of his sickness; that was only a few days previous to his death.

Q. What subjects did Mr. Nailor converse upon that night?

A. He conversed upon the condition of those children; then he talked about some of his recollections of Washington in his early days—some of his business experiences; that was about all of that nature.

Q. How long did you ever converse with him at any one time, except the occasion just referred to?

A. Only a few minutes.

Q. What seemed to be the condition of Mr. Nailor's strength physically during or at the times you saw him?

721 A. I don't know, of my own knowledge, what the condition of his strength was, for I was never consulted professionally about it. He appeared to be about in the condition you would expect in a man of his age. He was able to go around, up and down the steps, about as readily as a man of his age could be expected to travel.

Q. What was his appearance personally as regards his complexion, the color of his hair, and the general appearance of his skin, and how old did he appear to be?

A. I think his complexion was florid; don't recollect the color of his hair. I would suppose he was probably between sixty and seventy—sixty-five, perhaps. He was rather stout, I think.

722 Q. Did you become well enough acquainted with him so as to be able to say whether he was or had been addicted to the use of intoxicating liquor to such an extent as to impair his health or mental condition?

A. No, sir.

Q. Did you always see Kate Conley when you went to see the children on professional visits?

A. Yes, I think so.

Q. Did you see Mr. Nailor in her presence generally?

A. I saw him sometimes in her presence and sometimes away from her.

Q. Did you hear them talk to each other?

A. Merely heard them exchange remarks in regard to the condition of the child, that it was time to give it medicine, and

723 such other conversations as you would expect to hear in the sick room.

Q. Can you state how Mr. Nailor appeared to treat Kate Conley, whether kindly and with deference or otherwise?

A. I thought he always appeared to treat her kindly.

Q. Do you remember of hearing him speak of her in connection with his talk about the children, or at any other time?

A. I don't believe he ever mentioned her to me in any connection. I don't remember of his ever doing so.

Q. Did Kate Conley seem to have charge of the house the same as any woman would in a house where she was mistress?

A. Yes, sir.

Q. What is your opinion, as a physician, about the possi-
724 bility, probability, or likelihood of a man of the age and condition that Mr. Nailor was in during the four months you knew him becoming the father of a child or children?

A. I think it is possible.

Q. Is it usual or frequent for a man of that age and condition to beget children, as a question of medical science?

A. Such cases have been frequently reported. You would have to consider the age of the woman and her condition, whether she was capable of conceiving. A man of his age isn't as likely to beget children as a younger man.

Q. Have you attended Kate Conley professionally since the death of Mr. Nailor?

A. Yes, sir.

725 Q. What, if anything, has she said to you, since his death, about being pregnant?

(Objected to by Mr. Carrington.)

A. I don't know what the law is, but I think I will have to decline answering the question without her consent.

Q. Was anything said to you by any one, during Mr. Nailor's last sickness, about seeing him professionally; and, if so, by whom?

A. No, sir. I have no recollection of anything being said to me about seeing him. I know nothing of the kind could have occurred, because I saw Mr. Nailor a few days before his death. He had been out walking, and came in while I was there, and complained
726 of feeling unwell, and I heard nothing more from them until I saw in the paper the announcement of his death. This was during Christmas holidays, the last time that I saw him.

H. H. BARKER.

Subscribed and sworn to before me this 16th day of December, 1879.

IRVING WILLIAMSON,
Examiner in Chancery.

Deposition of Nicholas Callan for Defendant. (*Filed Jan.* 14, 1881.)

NICHOLAS CALLAN, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

727 By Mr. CARRINGTON:

Q. State your age, residence, and occupation?

A. I am seventy-one; I reside in Washington city; I am a notary public and commissioner of deeds.

Q. How long have you resided here?

A. I was born here, and lived here all my life. I have been in the business above mentioned for the last forty years.

Q. Did you know Allison Nailor, Sr., now dead?
A. Yes, sir.
Q. How many years?
A. Forty odd years.
Q. Did you ever see and converse with him?
A. Very frequently.
Q. Did you see and converse with him during the last few years of his life?
A. Yes, sir.
Q. Upon what subjects?
A. Upon the subject of executing deeds.
728 Q. When was the last time you saw him?
A. I can't tell exactly; the deeds will show; there were three deeds on one day.
Q. Are these the deeds you refer to?

(Witness is here shown three deeds from Allison, Nailor, Sr., to Catharine Conley.)

A. Yes, sir.
Q. Where were these deeds asknowledged?
A. At my office on F street, No. 1422.
Q. Did you converse with Mr. Nailor on that day?
A. I did, sir.
Q. What was his mental condition on that day?
A. Perfectly good, sir.
Q. What was his condition as to the use or effects of intoxicating liquors on that day?
A. He was perfectly sober and showed no signs of intemperance.
729 Q. On what subjects did you converse that day?
A. Mr. Nailor complained of being unwell. He came for the purpose of executing these deeds.
Q. Can you remember any conversation had with him during the last few years of his life?
A. No, sir; nothing, except the execution of the deeds and the state of his health; he has told me he was sick.
Q. What is your opinion of Mr. Nailor intellectually and as a man of business capacity?
A. I always regarded him as an uneducated man, but an active, enterprising business man.
Q. What was his character in the community as to business capacity and shrewdness?
A. He was generally understood to be an enterprising,
730 active business man, close in his dealings. I have frequently heard his character discussed all over the ward where we lived.
Q. In your judgment was he capable of executing such contracts and deeds on the day that he did so before you?
A. Yes, sir.

Adjourned until Thursday next at 4 o'clock p. m.

By consent of counsel a further adjournment is taken until January 5, 1880, at 3 o'clock p. m.

JANUARY 5, 1880.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and E. C. Carrington, Jr., and Charles Thompson, Jr., for defendant; whereupon the
731 cross-examination of witness, NICHOLAS CALLAN, is commenced.

By Mr. COLE:

Q. What other business than that of a notary have you been engaged in during the last forty years, if any?

A. I have been and am now, besides a notary, commissioner of deeds for various States and clerk and treasurer of the county of Washington.

Q. During what part of the life of Allison Nailor, Sr., did you know him most intimately, in the earlier part of his life, or during his last year?

A. From 1840 or 1841; I recollect 1841 certainly. From 1841 to 1854 or 1855 I knew him very well.

Q. Did you hear of his leaving his family and going to live with Kate Conley?

A. I heard he left his family and went to live with a
732 lewd woman without knowing her name.

Q. Did you see much of him after you heard he had left his family?

A. Very little, sir.

Q. During the last four or five years of his life about how often do you think you saw him and spoke or talked with him?

A. I can say certainly four times.

Q. Do you think it was much oftener than that?

A. No, sir.

Q. What sort of man generally was Mr. Nailor when you first knew him and up until, say, 1854 or 1855?

A. He was an active business man, engaged in keeping livery stables, and a speculator in real estate, and a thorough business man.

733 Q. Did you notice any change in Mr. Nailor's appearance and business habits during his life?

A. Yes, sir; there was a very material change in his latter days.

Q. State, as near as you can, what that change was, how it affected him, and how he appeared in his latter days, in comparison to what he was when you first knew him.

A. I have stated that from a very robust, active business man he became a mere skeleton, completely worn out; he could hardly speak intelligibly.

Q. How long before he died was he in the condition last above described?

A. I found him in that condition on each of the times I saw
734 him; I stated four times, but I can now say five times certainly; these occasions ran from the time he left his family up to the time of his death.

Q. From the time he left his family up to the time of his death, state whether you saw him on any occasions without speaking with him or talking to him.

A. I don't recollect ever having done so; no doubt I have.

Q. Do you remember what you talked about with him on those five occasions you saw him, or any of them?

A. On one; the first, I think, after he left his family; I met him in the City Hall; he was sitting in a buggy; he appeared so very feeble and emaciated that I offered my services to help him
735 out of the carriage. He declined my aid and spoke of his reverses and his bad health. On another occasion I visited him officially at the house of his son Allison. I went there to take his acknowledgment to a deed. He spoke of our long acquaintance and the certainty of his dissolution before long. I can't fix the dates of these conversations. In this interview after I left the room I saw his son Allison, and remarked to him that his father was not long for this world, and suggested to Allison to ask his father to make a will. This was before, long before (two years, probably), *be-*
736 *fore* he acknowledged before me the three deeds in controversy in this suit. I took the acknowledgment of a deed to somebody at that time. Another occasion was at his house in South Washington, on 13th or 13½. I am well satisfied it was 13th street. I went there with a Mr. McCabe, who was employed in the quartermaster general's office, to take an acknowledgment to a deed to McCabe. He was then reclining on a sofa, quite feeble and unable to execute the deed in consequence of his infirmities. He remarked that he would examine the deed, and if it was all right would call at my office some days afterwards, but never called. The last occasion my office was over the National Metropolitan Bank,
737 probably fifteen steps from the door to my office, and he complained very much of having to climb up these steps, and he came to me because I always attended to such business for him. He complained that climbing up the steps completely exhausted him. He came to acknowledge three deed—I presume the three in controversy in this cause. The three deeds all bore the same date. He came alone. I don't know, but I presume he signed the three deeds in my presence. He either signed or acknowledged the signature in my presence. The deeds were all prepared when he came there. In the deed recorded in liber 882, folio 408, the date in the first part of the deed is in my handwriting, and
738 in the certificates the dates, my name, and my seal, and my name as subscribing witness, are also in my handwriting. This is also true of the deed recorded in E. B. P. No. 17, folio 404. This is also true of the deed recorded in liber E. B. P. No. 17, folio 406. The deeds were not read over. I did not know who they were to; he did not tell me. We had no conversation about the propriety of making them. He never asked my advice about making them.

I am quite certain that these deeds were all executed on the same day. I remember that a day or two after their execution Mr. Allison Nailor, Jr., spoke to me about one deed, and I said: "No,
739 Allison, there were three." Mr. Nailor did not seem to be under the influence of intoxicating liquors at that time; there was debility of body. He engaged in business to my knowledge after he left his family. He never said anything to me at any time about the woman he was living with. I suppose I have taken one hundred acknowledgments of deeds for him before he left his family and some afterwards. I frequently wrote deeds for him. In my opinion I generally did all his conveyancing for him before he left his family whenever he had a deed to prepare himself.

N. CALLAN.

Subscribed and sworn to before me this 5th day of January, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

740 Adjourned to meet January 6, 1880, at 3 o'clock p. m.

1880, JAN'Y 6.

Met pursuant to adjournment, but the witness not being in attendance adjourned until Jan'y 7, 1880, at same hour.

Deposition of Thomas McCabe for Complainants. (*Filed Jan.* 14, 1881.)

JANUARY 7, 1880.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and Edward C. Carrington, Jr., and Charles Thompson, Jr., for defendant; whereupon
THOMAS MCCABE, a witness of lawful age, produced, sworn,
741 and examined by and in behalf of the *complainant*, deposes and says as follows:

By Mr. CARRINGTON:

Q. State your residence and occupation.

A. My residence is corner of 22nd and Virginia avenue. I am a messenger in the office of the depot quartermaster. I have lived in Washington between seven and eight years.

Q. Did you know Allison Nailor, Sr., deceased, and if so, for how long?

A. knew him about four years.

Q. Did you have any business transactions with him; and if so, state them.

A. I had. I made out a will for him and some two or three deeds. I used to sit with him sometimes in his house, and on one of these occasions he commenced to speak of his children, as
742 they were around him, and he told me that he was going to provide for them by leaving them farms in Montgomery county. He told me that on several occasions, and in a subsequent conversation he told me he would leave them the houses on D

street and one on 12th street; the one on 12th street, I think, he left to Kate Conley. He told me he was going to make a will and leave this to them in the will. I asked him to let me make out the will, to give me the writing of it, and he did so. I made them out for him, and brought them to him, and he laid them by for that time, saying he hadn't time to look over them at that time, but he would look over them at the first opportunity, and told me
743 to call again in a few days. I did so, and he expressed himself to me in this wise: That he often transferred property on forms no better made than they were, but he expected they would be disputed after his death, and it would be as well to have some one else's opinion on them, and asked me to go up to F street for Nicholas Callan and bring him down. I went and brought Mr. Callan down. Mr. Nailor showed him the papers, and asked him his opinion as to their validity; whether they were legally made out, so that the property could be transferred by them. Mr. Callan made answer that there was no necessity for him doing that,
744 as that he himself was fully competent to know whether they were legally made out or not. That ended the affair as to the papers; it turned into a desultory conversation, and Mr. Callan and myself left. I understood that Mr. Nailor sent them up to Mr. Carrington, and that Mr. Carrington considered it was better to make out new papers, as they didn't cover the matter as well as could be done by a lawyer.

Q. How many conversations did you have with Mr. Nailor with reference to the transfer of this property?

A. About six or seven.

Q. What period of time was covered by these conversations?

A. Three or four months.

Q. Who was present during these conversations?

745 A. Nobody, unless the children; unless on one occasion Kate Conley was present. On other occasions, if she was present, she went upstairs.

Q. How long was it from the time that he first talked to you on this subject to the date of the preparation of these deeds?

A. Three or four months.

Q. State if you saw him in the presence of these children; and, if so, what was his manner towards them?

A. His manner towards them seemed always to be very affectionate, he having them on the sofa and fondling them. He seemed to take great pleasure in having them near him.

Q. Did he converse with you or with any one in your presence about them?

746 A. He conversed with me about them as to their smartness and precociousness at their age, dwelling often on a little fellow going through the yard and picking up everything and saving it, if it was a nail or anything that way, which led him to say, as far as I can judge, that he would give him the farm in Montgomery county; that he would make a good husbandman when he came of years.

Q. Will you state how these conversations with reference to the transfer of this property originated; that is, what would lead to them?

A. His physical illness. He would be all the time saying that he hadn't very long to live; that he would have to do something
747 for them—leave them something—so they wouldn't be left on the world penniless. Then he stated to me what property he would leave them, which, as well as I can recollect, were the houses on D street and the farms in Montgomery county.

Q. Did these conversations occur in the presence of the children?

A. Mostly in the presence of the children.

Q. You stated that you first prepared a will and subsequently deeds that covered the same property that the will embraced; what reason was there, if any, for the execution of these deeds in lieu of the will?

(Objected to by Mr. Cole, because it recites facts that have
748 not been testified to, and because it has reference to a will which is not produced and the absence of which is not accounted for.)

Question withdrawn.

Q. Did you have any conversation with him in reference to the will of which you spoke? And, if so, state it.

(All testimony in relation to an alleged will is objected to unless the same be produced or its absence properly accounted for, and also because the testimony is irrelevant.)

A. Yes, so far as to ask him for a description of the property, which he gave me to the best of his knowledge, and told me that his papers were away from him, and asked me to go down to
749 the record office and to examine the books. I did so and gave a brief examination to the best of [my] knowledge, and upon the information and data obtained there, along with what he told me, I made the will and the deeds out.

Q. What property was this will to cover?

(Same objection interposed.)

A. To cover the farm in Montgomery county. I think there were two farms covered. I can't recollect whether the will covered the houses or not; to the best of my opinion, I think it did. It might not have covered all of them. I think in the deeds there was an addition made of more property. I think the house on 12th street was an addition to the will.

Q. Was the will executed before he instructed you to prepare the deeds?

(Same objection interposed.)

750 Yes.

Q. At the time he instructed you to prepare the deeds did he say anything to you about the will?

A. I can't recollect.

Q. Did you have a conversation with him at any time with reference to the validity of wills and deeds as compared with each other?

A. Yes; he spoke to me about the will, and said he thought it would be more binding to have the deeds as well as the will. As far as he could judge, after his death, the disposition of the property would be contested in law, and that it would be more binding to have the deeds as well as the will and harder to break. That was the purport of his discourse.

Q. During the times you refer to as having conversed with
751 him on these matters, was he intoxicated or not?

A. He wasn't. He never spoke upon the subject when he was under the slight influence of liquor. He seemed to be a little cross when under the influence of liquor, and when he had taken a glass or two he would never talk on that subject. When I say under the influence of liquor, I don't mean to say intoxicated either.

Q. What was his mental condition?

A. His mental condition seemed to me to be always good, sound.

Q. What evidence, if any, did you see of insanity or imbecility?

(Objected to as calling for the opinion of the witness.)

A. Never seen any.

Q. What was the condition of his physical health?

A. It didn't seem to be very good; he was sick occasionally.

Q. Did he complain much?

752 A. Yes; when his sickness came on he complained a good deal.

Q. What was the usual length of your visits to his house?

A. Sometimes half an hour, sometimes an hour. I mostly went in the night.

Q. To what extent did you see him use intoxicating liquor during these visits?

A. Sometimes he would take it once, sometimes twice, a half hour or so between. He would take a small quantity as a drink.

Q. What do you mean by a small quantity?

A. About two thimblefulls, mixed with water generally.

Q. What is your judgment as to his mental ability and shrewdness as compared with other men?

(Objected to by Mr. Cole.)

A. As far as I knew him, for the short time I knew him, I
753 think he was very shrewd, with more than average business qualifications.

Cross-examined by Mr. COLE:

Q. Where were you born?

A. Edenderry, Kings county, Ireland.

Q. How long have you lived in Washington?

A. Between seven and eight years.

Q. How long have you been a messenger at the depot quartermaster's?

A. Since I came to Washington; the same time.

Q. What business were you engaged in before you were so employed?

A. I was running a machine in David S. Brown's print works Gloster City, New Jersey.

Q. How long since you left Ireland?

A. I left Ireland in 1858, November, or 1859.

Q. When did you first see Allison Nailor, Sr., and where?

754 A. I think I went in to borrow a spade from him. I lived next door to him but one. It was about five or six years ago, I guess six years ago.

Q. Who introduced you to him?

A. I used to be working in the garden, which ran parallel to his, and we used to talk across the garden. I can't recollect how I was introduced to him; the same that any other neighbor gets acquainted; there was no formal introduction.

Q. Did you continue to live as near him as you have stated from the time you first knew him up until the time of his death?

A. No, sir.

Q. How long did you continue to live next door but one to him?

A. Something in the neighborhood of two years.

755 Q. Which one of you moved?

A. I did.

Q. How far did you live from him after he removed?

A. Up to 22nd and Virginia avenue. I guess it is a mile.

Q. How often did you see Mr. Nailor during the time you lived next door to him but one?

A. Almost every day I would see him, except when he would be sick.

Q. How much of the time was he sick?

A. I can't recollect that.

Q. Did you go into his house often when you lived so near him?

A. Yes.

Q. About how often?

A. About two or three times a week. Some weeks I wouldn't go in at all.

Q. Did you continue to visit him at his house as frequently after you removed?

756 A. No, sir.

Q. About how frequently did you visit him after you removed?

A. The visits were not made uniform. Sometimes I would be there twice in a week; sometimes I would not visit more than that often in a month.

Q. Did you never see him intoxicated?

A. I can't say; it is pretty hard to define what intoxication is. I have seen him under the influence of liquor; I can say that so far as I can judge.

Q. How frequently?

A. On three or four occasions.

Q. Not more than that?

A. No, sir; he could be intoxicated unknown to me. I can't define intoxication. I knew he was under the influence of liquor. I never saw him falling.

757 Q. How often have you seen him under the influence of intoxicating liquor?

A. Three or four times.

Q. Not more than that?

A. Not more than that. When I say under the influence of liquor I don't mean to call him under the influence of liquor when only drinking once or twice a small portion of whiskey. Those times I saw him when I say he was under the influence of liquor I didn't see him drink; I judged he was under the influence of liquor.

Q. Did not a small quantity of liquor affect him?

A. No; I couldn't say it did.

Q. Was he not easily affected by liquor?

A. I couldn't tell; I don't think a small quantity of liquor had an appreciable effect on him when I saw him drinking.

758 Q. Did he ordinarily take two or three drinks while you were present on each visit?

A. Sometimes one, sometimes two; on one occasion he took three that I can recollect. There was a good deal of time between those three.

Q. And you were generally present from half an hour to an hour?

A. Yes; sometimes I would only go into the house and out again.

Q. Did you observe very closely the quantity that he ordinarily drank at one time.

A. Yes.

Q. Always?

A. Whenever he drank before me I could always tell what he drank.

Q. Why did you observe so closely the quantity he drank?

A. I couldn't help but observe, sitting together as I might say.

759 Q. How do you happen to remember, after the lapse of some years, that he generally drank about two thimblefuls at a time?

A. Because he always made it a point not to drink too much, and to express himself in that way.

Q. Did he always tell you when he went to drink that he made a point of not drinking too much?

A. He didn't tell me anything of the kind; but if I went to fill out for him he would make these remarks to that effect; if the quantity appeared to be above that mentioned he would remark that he couldn't take much.

Q. What do you mean by "filling out" for him?

A. Putting it into the glass from the bottle or decanter.

Q. Did you generally drink with him?

760 A. Not always; sometimes.

Q. How did you happen to pour out his for him?

A. He asked me.

Q. Where did he keep it?

A. In some kind of a safe or bureau, in the kitchen or closet.
Q. What sort of a vessel did he generally keep it in?
A. Sometimes in a decanter; sometimes in a demijohn.
Q. Wasn't there a bar in the house?
A. No, sir.
Q. Didn't they keep a grocery store, liquors, &c., in a portion of the house in which he lived while you lived next door but one to him?
A. No, sir; nor anything appertaining to it.
Q. Where is the house you have reference to?
A. Between B and C on 14th street.
Q. Did he live there during all the time you knew him?
761 A. He lived there all the time I lived there, and all the time I knew him.
Q. Did you continue to know him down to the time of his death?
A. Yes, sir.
Q. And you are certain that no groceries or liquors were kept for sale or sold in that house during any part of that time?
A. I say that emphatically there was none.
Q. Then you were quite intimate with the occupants of that house during that time?
A. Yes.
Q. Who else did you see there except Mr. Nailor?
A. I seen the help, a servant girl; and sometimes a colored man by the name of Bob; sometimes some of the other neighbors going in any out.
Q. Anybody else?
762 A. I seen Mr. Callan there once.
Q. Anybody else?
A. I don't recollect.
Q. Do you know Kate Conley?
A. Yes.
Q. Did you ever see her there?
A. Yes.
Q. How often?
A. Couldn't state how often.
Q. Did you generally see her when you went there?
A. Yes, generally.
Q. Talk with her?
A. Yes, sometimes.
Q. What did she seem to be doing?
A. Seemed to be doing the work of the house, assisting in it, and taking care of the children. Sometimes I seen her ironing.
Q. Did she seem to have charge of the house like any other housekeeper?
A. I think so, as far as I could judge.
Q. How long have you known her?
763 A. Some length of time. I knew Mr. Nailor.
Q. When and where did you first see her?
A. The first time I went into the house.
Q. What was she doing on that first occasion?

A. I can't recollect.
Q. Were you introduced to her?
A. Not formally.
Q. Was she generally present when you conversed with Mr. Nailor?
A. Sometimes she was and sometimes she wasn't.
Q. Do you remember whether she was ever present when you and Mr. Nailor were talking about the deeds or the will?
A. She might have been once or twice.
Q. Did she take any part in the conversation about them?
A. I don't recollect that she did.
Q. Do you recollect that she did not?
764 A. I can't swear positively that she didn't either, no more than on one occasion she went up stairs when we got talking about it.
Q. From her appearance, about how old should you say she was when you first met her?
A. In the neighborhood of thirty.
Q. Of what nationality is she?

(Objected to by Mr. Thompson.)

A. I couldn't tell what nationality she is—in my judgment she is Irish.
Q. Who first mentioned the subject of making a will or deed, you or Mr. Nailor?
A. Mr. Nailor.
Q. About when was this?
A. About three or four months before these papers were made out.
Q. What papers do you refer to?
A. The will.
Q. Where is that will?
A. I don't know.
Q. What did you do with it?
765 A. Gave it to Mr. Nailor.
Q. Did you e'er prepare any other paper for him except the will?
A. The deeds.
Q. What deeds?
A. The deeds of his property, farms in Maryland and some houses here in the town.
Q. Do you mean to say that you prepared the deeds for the property in controversy in this suit?
A. I do.
Q. In what year was this?
A. I can't say what year it was—it was three years ago.
Q. Do you know that Mr. Nailor executed the deeds prepared by you?
A. I don't think he did.
Q. Do you know whether he did or not?

A. I know that Mr. Nailor decided against them; they did
766 not fill up his legal conceptions in reference to a good legal transfer of the property.

Q. What was the particular objection made to them?

A. Well, I will state his own words: that he transferred property often on deeds no better made out than they were, but at the same time he thought it best to have a legal opinion on it, and he sent me for Nicholas Callan, and I brought Mr. Callan down; he asked Mr. Callan to look at the papers and give him his opinion as to whether they were good in law; Mr. Callan made answer that there was no necessity for him to do that, that Mr. Nailor was fully competent to judge of them himself. That dropped the whole thing there.

767 Q. Then Mr. Callan refused to give him any advice in relation to them?

A. Yes.

Q. Did Mr. Callan read the deeds as prepared by you?

A. I don't think he did.

Q. Was he told by you or Mr. Nailor what the object of them was?

A. I think Mr. Nailor told him the object.

Q. When Mr. Callan refused to give him any advice in relation to the deeds, what did Mr. Nailor say?

A. He acquiesced in his judgment.

Q. How many of the deeds were there?

A. I think there were three or four.

Q. What did Mr. Nailor do with them then?

A. I think he sent them here to Mr. Carrington.

Q. What makes you think so?

768 I think so from my general knowledge; I think I brought them up to Mr. Carrington; no, I don't think it was me.

Q. Well, then, how did you get the impression that Mr. Nailor sent them to Mr. Carrington?

A. I think I heard him speak of sending them.

Without completing the cross-examination of witness McCabe, adjourned until to-morrow, January 8th, at 2 o'clock, p. m.

JANUARY 8, 1880.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and Gen'l Rutherford, E. C. Carrington, Jr., and Charles Thompson, Jr., for defendant; whereupon the cross-examination of the witness, THOMAS MCCABE, is resumed.

769 By Mr. COLE:

Q. To whom did you hear him speak of sending them?

A. To Kate Conley.

Q. When was that?

A. Some time after Mr. Callan [was] there.

Q. How did he happen to tell Kate Conley that?

A. I can't recollect.

Q. About how long was this after Mr. Callan had been there?

A. The interval of time was so short I couldn't say; it wasn't very long anyhow.

Q. On the same day?

A. No, sir.

Q. What other conversation, if any, did Mr. Nailor and Kate Conley have in relation to the deeds at the time you say he told her that he had sent them up to Mr. Carrington?

A. None that I can recollect.

Q. Then you do not know, of your own knowledge, whether
770 Mr. Nailor ever executed the deeds you prepared and delivered to him?

A. Only so far that he asked me to be a witness at the making of the will, I think it was.

Q. Do you know, of your own knowledge, whether Mr. Nailor ever executed the deeds you prepared and delivered to him?

A. I don't.

Q. You speak of writing a will for him; was that before or after you wrote the deeds?

A. Before.

Q. How long before?

A. I can't recollect that either; a few months, I think; a short time; it might be two or three months.

Q. Did he execute that?

A. I wasn't present at the execution of it.

Q. Do you know that it was executed?

A. Can't say that I do.

771 Q. Who asked you to prepare the will?

A. Mr. Nailor. I think I got that will recorded for him; I know I got some papers recorded for him; whether it was the deeds or the will I can't recollect.

Q. Where did you get it recorded?

(Objected to by Mr. Carrington on the ground that the question assumes what the witness did not say.)

A. In the office of the recorder of deeds.

Q. When?

A. It is nearly two years ago, to the best of my recollection.

Q. Can you not state whether it was the will or the deeds that you got recorded?

A. At this time I can't recollect.

Q. Can't you remember whether you took one or three papers to the recorder to be recorded?

A. I think it was one.

772 Q. Well, there were three of the deeds, were there not?

A. So I think.

Q. Did you talk with any one else besides Mr. Nailor about writing the will for him?

A. I might have spoken to this woman when she was present on one of these occasions.

Q. Was this before or after Mr. Nailor asked you to write the will?

A. After.

Q. How long?

A. I couldn't say how long.

Q. How did you first learn that Mr. Nailor contemplated making a will?

A. I think I have answered that question in the foregoing testimony; I said that when his children were playing around him sometimes that he would speak of making a provision for them; that he would remark that he wouldn't expect to live
773 very long; and that he would make a provision for them before he died by leaving the farm or farms in Montgomery county to the little boy and the houses to the girl; something in that line.

Q. Then didn't you suggest to him that a good way to do that would be to make a will?

A. Mr. Nailor wouldn't take no suggestion of that kind from me; therefore I didn't do it.

Q. Why did you not?

A. Because, as I said before, that from a personal knowledge of him I knew he wouldn't be guided by me; neither did I want to influence [him].

Q. Were you very careful not to influence him?

A. I thought nothing about it.

Q. Did you not request him to let you prepare a will for him?

774 A. Yes; after he had come to the the conclusion to make one.

Q. Did you also request him to let you make the deeds?

A. Yes.

Q. How much did Mr. Nailor pay you, if anything, for writing the will and the deeds?

A. Forty dollars altogether.

Q. Are you a lawyer?

A. I can't say I am. I haven't that pretension.

Q. Are you a notary public or any other office- authorized to take the acknowledgment of deeds?

A. No, sir.

Q. Were you at the time you prepared these?

A. No, sir.

Q. Were you ever?

A. No; but I have made out a deed before that, a deed of my own house in Gloucester City, New Jersey.

Q. Is that the only one you ever wrote before?

775 A. I think I have made a couple of more, but I can't recollect who they — for; in the same town I have been an occasional reporter there for the New Jersey Press.

Q. Were those all you ever wrote before?

A. That's all, I think, in regard to land property.

Q. How did Mr. Nailor come to employ you to prepare such papers for him when you were not skilled in business?

A. I considered myself skilled enough to make them out. I think I have stated before how he came to employ me.

Q. He employed you at your request, as I understand?

A. Yes, sir.

Q. Did he make no objection to paying you forty dollars for writing them?

A. No, sir.

776 Q. Did he ask you what your bill was and voluntarily pay you, or did you have to ask him for it?

A. It came around in a desultory conversation which I had with him in the house a short time afterwards, and he spoke of the papers not being used, but at the same time I was entitled to whatever consideration that I lay claim to that would be reasonable. I told him then I thought it was worth forty dollars, and I made a remark at the same time that I thought a lawyer would charge him twenty-five dollars for a single paper. He agreed to it.

Q. How did he pay you?

A. He paid me two twenty dollars; twenty dollars each time; two times.

Q. Money or check?

A. Money.

Q. Did you receive it directly from him?

777 A. Yes.

Q. Anybody else present?

A. No, sir; unless his children.

Q. How long after you wrote the deeds did he pay you?

A. It might be about four or five weeks, to the best of my recollection, the first payment.

Q. What time of the year?

A. I think it was in the spring.

Q. What year?

A. About a couple of years ago.

Q. When Mr. Nailor talked with you about making some provision for the children that were there at the house, did he say anything about giving Kate Conley anything?

A. I can't recollect.

Q. To whom was the property willed in the will which you prepared?

A. I think it was to Willie Earnest and Sarah Edna, his son and daughter?

Q. Was Kate Conley mentioned in the will?

A. I can't positively state.

778 Q. Did you ever write any other will except that one?

A. No, sir; but Mr. Nailor dictated some of that will himself to me; brought a copy down that he said one of his sons had made.

Q. Did he say which son?

A. Yes, sir.

Q. Which one was it?

A. Allison, Jr.

Q. Did yo go by that?

A. As far as I can judge, I did.

Q. Did you follow it substantially in all particulars?

A. Well, no; I don't think I followed it substantially; I used a little of my own judgment.

Q. Were the persons to whom the property was given the same in the one which you prepared as in the one he gave you, which he said his son Allison prepared?

A. Yes, I think the will Allison prepared covered only the
779 property over to the two children. I think the one I prepared might have covered Kate Conley; I can't recollect. Mr. Nailor further told me that this gentleman, Mr. Clash Nailor, expressed himself that he was glad the children were getting the property instead of Allison having it all.

Q. What property was included in the will you prepared?

A. I think the two farms in Montgomery county and the houses here on D street—the farms to the boy, the houses to the girl.

Q. To whom were the three deeds made that you prepared?

A. To the two children and to Kate Conley, as far as I can recollect.

Q. One deed to each?

A. I can't recollect.

Q. What did you do with the will that Mr. Nailor gave
780 you, which he said was prepared by his son Allison?

A. I returned it to him after I used it.

Q. Did Mr. Nailor give you any reason why he did not use the will prepared by Allison, instead of having another prepared?

A. I don't think I stated that he prepared another will; the deeds I had reference to.

Q. Have you not sworn that you prepared a will for Mr. Nailor, and that you prepared it by one which he brought you, which he said his son Allison had prepared?

A. Yes.

Q. Now, did he give you any reason why he did not use the one which he said his son Allison had prepared, instead of having you write another?

A. I can't recollect that he did.

781 Q. They were alike, were they not, substantially?

A. I can't swear to that at this time. I think there was some little difference in the wording.

Q. No difference which you now remember?

A. Yes; I say there was a difference. The will which he said came from Allison Nailor, Jr., had on it Allison Nailor alone, and I remarked to Mr. Nailor that Allison Nailor, Sr., should have been on it. That is about all I recollect.

Q. When did that will have Allison Nailor on it?

A. Somewhere in the begin-ing of it.

Q. When you write a will how do you commence it—what is the introductory clause of it?

A. I went by the copy that Mr. Nailor gave me.

782 Q. Who told you that Mr. Carrington thought the deeds you had written better not be used, but others could be prepared by a lawyer to cover the matter better?

A. I think, to the best of my recollection, Mr. Naylor spoke of it.
Q. Did Kate Conley tell you so?
A. She might have done so.
Q. Who took the deeds from Mr. Nailor to Mr. Carrington's office?
A. I swore yesterday I thought I did, but I didn't. I do not know who did.
Q. Did not Kate Conley take them?
A. I don't know, sir.
Q. Didn't you ever hear who took them from Mr. Nailor to Mr. Carrington?
A. No, sir; I did not.
Q. Nobody ever told you who did?
A. I don't recollect that they did.
Q. How did you learn that they were ever sent to Mr. Carrington's office?
783 A. The first I ever learned of it was from Mr. Nailor himself.
Q. Who else ever told you?
A. I think that Kate Conley told me also.
Q. Now, didn't she tell you that she took them herself to Mr. Carrington?
A. No, sir, she didn't tell me anything of the kind. She might have told me at some period afterwards.
Q. Well, then, she may have told you at some time that she did take them to Mr. Carrington's office?
A. Yes.
Q. About how long ago did she tell you that?
A. I really can't recollect how long it is.
Q. Before or since the institution of this suit?
A. I think it was since.
Q. Do you remember about when this suit was brought?
784 A. I recollect reading about it in the newspapers. I can't recollect how long it was ago. I think it was in the "Post."
Q. How long after the institution of this suit was it that Kate Conley told you she had taken the deeds to Mr. Carrington?
A. I didn't say she had told me that; I said she might have told me.
Q. Can't you remember whether she told you so or not?
A. I cannot.
Q. What is your best recollection on that subject?
A. The best recollection on that subject that I can give is that when I was told I was to be a witness in this affair, and come down here to give my testimony, and also to Gen'l Rutherford's, I might have learned it then. I have no positive memory that she told me.
785 Q. Did you ever hear that Kate Conley took the deeds to Mr. Carrington?
A. I can't swear that I did.
Q. How long after this suit was brought before you first saw Kate Conley?

A. It wasn't long. I can't recollect the time—only a short time.
Q. Where did you see her the first time after the suit was brought?
A. I think she came up to my house.
Q. How often have you seen her since that time?
A. Several times.
Q. Say about how many?
A. About a dozen.
Q. Where did you see her generally?
A. Seen her here, at Gen'l Rutherford's, and at her own house.
Q. Any place else?
A. Not that I recollect.
Q. How often have you seen her here?
A. Two or three times, I think, I saw her here.
786 Q. How did you happen to meet her here?
A. She asked me to come to this place.
Q. Did you come with her?
A. Once, I think, I did.
Q. What did you talk about when here?
A. We didn't talk about anything in particular, except to give my testimony.
Q. Did you ever give your testimony before in this case?
A. Yes, sir.
Q. Who wrote it down?
A. I think Mr. Carrington and Gen'l Rutherford.
Q. Did you swear to it?
A. I don't know. I can't recollect.
Q. Who were present?
A. She was present, I think. At least she was with me at Gen'l Rutherford's. I can't recollect whether she was present when the testimony was given or not.
Q. How many times did you see her at Gen'l Rutherford's?
A. I forget whether it was once or twice; once or twice.
Q. Did you go there with her?
787 A. Yes, sir.
Q. At her request?
A. Certainly.
Q. Did you talk about this case there?
A. No.
Q. No allusion made to this case at all at Gen'l Rutherford's?
A. Not with her.
Q. Did you talk with anybody else about this case at Gen'l Rutherford's except her?
A. I ain't in the habit of talking with anybody about such business as this unless I am invited to do so. I simply answered the questions of Gen'l Rutherford.
Q. Were those questions in relation to this case?
A. Yes.
Q. Was Kate Conley present during the conversation?
A. During the testimony being given, I think she was; that is my impression.

788 Q. Did you give your testimony again at Gen'l Rutherford's?

A. I don't recollect.

Q. How often have you seen Kate Conley at her house since this suit was brought?

A. About nine or ten times.

Q. Not more than that?

A. I don't think it was.

Q. Have not you and she talked a good deal about this case?

A. Not a great deal.

Q. Have you ever expressed your opinion to her as to whether she could succeed in holding the property?

A. I may have done so, but I don't recollect.

Q. Hasn't she ever asked you what you thought about her prospects of succeeding in the case?

A. No; I don't think she has.

Q. Did you see Kate Conley after the death of Mr. Nailor, and before this suit was brought?

A. I may have. I can't remember exactly whether I did or not.

789 Q. You know her quite intimately, do you not?

A. I don't know what you mean by intimately. I know her the same as any neighbor I was living near, going into the house occasionally.

Q. How near do you live to her now?

A. Ten squares in a direct line, about.

Q. How far is it to go by the streets in the ordinary way?

A. About four more squares.

Q. How long have you lived where you now do?

A. I think in the neighborhood of four years.

Q. Is Kate Conley friendly and intimate with your wife?

A. They knew one another, of course, on account of living near to one another for about two years.

Q. Do they visit and call upon each other?

790 A. I don't think my wife has been there since the funeral of the children, so far as I can recollect. She may have been there once.

Q. Has Kate frequently called on your wife since that time?

A. Never.

Q. Has she never been to your house?

A. Yes; she has.

Q. How often?

A. Three or four times—more than that, six or seven times.

Q. What did she come there for?

A. When me and my wife was worn out watching a baby which two doctors had given up for death, an old woman living next door brought her in, and she tended that child and helped, I believe, to bring it from nearly death to life. She sat up with it, and did all a woman could do for it.

Q. When was that?

A. Not long after I moved into where I was living, next door to her but one.

791 Q. That was while Mr. Nailor was living there?

A. Yes, sir.

Q. Has she never been to your house on any other occasion?

A. Yes.

Q. When and how often?

A. About half a dozen times.

Q. For what?

A. That I couldn't say, except one time she came to tell me about this case, once or twice.

Q. Didn't she come sometimes to call on your wife?

A. I can't say she did; she came more ostensibly to see the children, as far as I could judge.

Q. Well, you feel very kindly towards her, do you not?

A. Yes.

Q. And you would like to see her succeed in this case?

A. I am only here, as far as in me lies, to speak the truth as far as I know and do justice. I don't want to wrong anybody.

792 It is immaterial to me whether she succeeds or not.

Q. Are not your sympathies with her in this matter?

A. I have no sympathies.

Q. Do you not think that she ought to succeed in this case?

A. I don't think anything about it for a moment.

Q. Don't you hope she will?

A. Gentlemen, I have no hopes about it at all, good, bad, or indifferent; neither hopes nor fears.

Q. Did Kate Conley come to your house and take care of your sick child before or after you prepared the will and deeds for Mr. Nailor?

A. I believe I stated that she did this a little after I moved into the place next door but one to her. It was before I prepared the deeds.

Q. Did you know Mr. Nailor at that time?

A. I knew him to have a talk with him, and perhaps had

793 been in his house once or twice before that.

Q. Mr. Nailor seemed to be weak and sickly nearly all the time, did he not?

A. No; I can't say he was. I have seen him driving out himself in his buggy many a time.

Q. Didn't he nearly always complain of being sick?

A. No, sir.

Q. Didn't he habitually complain of his physical condition and say that he had not long to live?

A. That would be when he would be sickly, feeling unwell, and not at other times.

Q. Well, wasn't that a great part of the time?

A. I can't say it was; there used to be long intervals between those times; I used to meet Mr. Nailor driving in his buggy; when in health he didn't complain at all.

794 Q. Did he do any work or business while you knew him?

A. Yes, sir.
Q. What?
A. I knew him to chop hard oak wood with an axe.
Q. How much?
A. I couldn't say how much. I suppose what done — the fire to make kindling wood.
Q. How often did you see him chopping wood?
A. On several occasions.
Q. What other work or business did you ever know him to do?
A. I knew him to start out with his children to his farm in Maryland and come back with them.
Q. When he told you that his papers were away from him, where did he say they were?
A. I don't know as he ever told me that. He spoke of sending them here. I thought you had reference to the deeds. I
795 think he said the papers were with Mrs. Nailor.
Q. Did Mr. Nailor ever tell you that he had conveyed some property to the children prior to the time you prepared this will and these deeds for him?
A. Yes, I think he did.
Q What did he say?
A. I think, from the tenor of his conversation, he said he had conveyed the house he was living in on 14th street, as far as I can recollect.
Q. To whom did he say he had conveyed it?
A. My impression is that he said he had conveyed it to the little boy.
Q. Did Mr. Nailor leave the impression upon your mind by what he said to you at the time you were preparing the deeds that he intended to execute the will and the deeds both?
A. I can't say that he did.
796 Q. Didn't you say on yesterday that he said he thought it would be more binding to have the deeds as well as the will?
A. Yes; that was after the will was made.
Q. Did you ever see Kate Conley before the time she came to your house and took care of your sick child?
A. I think I did.
Q. When and where?
A. At the door-step of her house.
Q. Was that the first time you ever saw her?
A. I can't recollect now the first time. It probably was.
Q. When was that?
A. A short time after going to live there.
Q. Speak to her at that time?
A. No, sir.
Q. When did you first see her to speak to her?
A. On the occasion of her attending the child.
797 Q. Did you know at the time you were calling at Mr. Nailor's that he was a married man and had a wife living?
A. Neither the first nor second time I didn't know.

Q. Did you know it before you prepared this will and the deeds?

A. I can't recollect what time I knew it.

Q. Did you know at the time, or before you prepared this will and these deeds, that Mr. Nailor was living there with Kate Conley?

A. Of course I knew he was living with her.

Q. Did you understand her to be his wife?

A. From what I saw her doing, she was acting that part. I saw her nursing his children, as I supposed them to be, and him when he was sick; very kindly, too.

798 Q. Did you understand her to be his lawful wife?

A. I had no knowledge one way or the other of it.

Q. What did you hear from others in regard to that?

A. I may have heard that she wasn't his wife.

Q. Don't you know that you heard so?

A. I may have heard it; very probably did. I have seen dinners coming there from his son's house.

Q. How do you know that they came from his son's house?

A. I seen the buggy that I knew used to be in the stables going there, and by the conversation that would sometimes ensue about the quality of the dinner or supper.

Q. Buggy from whose stables?

A. Mr. Allison Nailor, Jr.

Q. You never saw his son go there?

A. No, sir.

799 Q. Did not Mr. Nailor tell you at the time you were about to draw the will and deeds that he could not give you a description of the property because his wife had the papers?

A. Yes.

Q. Did you understand him, then, to refer to Kate Conley or to some person else as his wife?

A. No; I didn't understand him to refer to Kate Conley.

Q. Was not Mr. Nailor sick in bed at the time you wrote the will?

A. I couldn't say he was, because I wasn't in the house when I wrote the will.

Q. Did you not understand that he was sick in bed at that time?

A. I don't think he was.

Q. Do you know the woman by the name of Kline or Kine?

A. Yes.

Q. Where does she live?

A. I think on 14th street.

800 Q. What relation are you to her, if any?

A. None whatever.

Q. Do you know her well?

A. I don't.

Q. Do you know her as well as you do Kate Conley?

A. No.

Q. Did you ever know of Mr. Nailor's having an improvement bond of the city of Washington for $300, or thereabouts?

A. I know nothing about it.

Q. Did you ever see such a bond in his possession?

A. No, sir.
Q. Or in the possession of Kate Conley?
A. No, sir.
Q. Did you ever hear Kate Conley say anything about such a bond?
A. No, sir.
Q. Are you a member of any church?
A. No, sir.
Q. Do you know whether Kate Conley belongs to any church?
A. I have no knowledge that she does.
801 Q. What is your religious belief?

(Objected to.)

A. It would take me a long time to tell you my views.
Q. Do you believe in the existence of a Supreme Being?
A. I do.
Q. Do you believe in a state of future rewards and punishments?
A. That was what my father educated me to, and I still retain some of his teachings.
Q. Do you retain them to that extent?
A. Yes, sir.
Q. Then you do believe in a future state of reward- and punishments?
A. Certainly.

Redirect by Mr. CARRINGTON:

Q. Where did you live when you first came to this country?
A. New Orleans, Louisiana.
Q. When and why did you leave there?
802 A. I left there so as I wouldn't be pressed into the rebel army.
Q. Where did you go then?
A. I went to St. Louis and joined 1st Missouri infantry, under command of Frank P. Blair; afterwards changed into artillery; I served during the war, and was honorably discharged.

THOMAS McCABE.

Subscribed and sworn to before me this 8th day of January, A. D. 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

THOMAS McCABE, being recalled, says:

By Mr. CARRINGTON:

Q. You speak of copying or using a certain will that was shown you by Mr. Nailor in the preparation of the will you prepared
803 for him; look at this paper and say if it is the one you refer to?

(Paper handed witness, and is here filed, marked C. C., No. I.)

A. It isn't.

Cross-examined by Mr. COLE:

Q. Do you know in whose handwriting this paper is?
A. I decline to answer that question.
Q. Do you know in whose handwriting it is, of your own knowledge?
A. I decline to answer.
Q. Can you recognize the handwriting of this paper?
A. I recognize Allison Nailor's name there.
Q. Is that all you can recognize?
A. I decline to answer that question.
Q. Did you ever see this paper before; if so, when and where?
A. I think I brought that paper to be recorded.

804 (Mr. Cole requests the examiner to certify the testimony to the court, for the purpose of obtaining its order in the matter of the refusal of the witness to answer to three questions, as shown above.)

Adjourned to meet on January 10th, at 3 o'clock p. m.

JANUARY 10, 1880.

Met pursuant to adjournment, and, in consequence of the absence of the witness, adjourned until a day to be fixed.

804*a* *Exhibit C C, No. 1, filed with Testimony of Thos. McCabe (page 92). Irving Williamson, Examiner.*

In the name of God, amen.

I, Allison Nailor, Sr., of the city of Washington, District of Columbia, being of sound & disposing mind and memory, and considering the uncertainty of this life, do therefore make, ordain, publish, and declare this to be my last will and testament—that is to say:

First. Upon my death I be decently buried, and that after my funeral expenses and lawful debts are paid I give and devise to my son, Willie Ernest, my farm, situated in Montgomery county Maryland, which is familiarly known & called "Friendship," &
804*b* which contains 100 acres, more or less, said farm now being occupied by Mr. Floy Beans, as tenant.

Second. I give and devise to my daughter, Mary Edna, part of lot No. 12, square No. 258, situated on "D" street N. W., in the city of Washington, District of Columbia, with and including the improvements thereon, which consists of 2 two-story brick houses, numbered respectively 1310 and 1312.

I also give and devise to my said daughter, Mary Edna, part of lot No. 11, square No. 258, situated on "D" street N. W., in the city of Washington, District of Columbia, with and including the improvements thereon, which consists of 2 two-story brick houses, numbered respectively 1314 and 1316.

804*c* I also give and devise to my said daughter, Mary Edna, parts of lots Nos. 2 and 20, in square No. 293, situated on 12th street N. W., in the city of Washington, District of Columbia, with and including the improvements thereon, which consists of a two-story brick house numbered 306.

I also give and devise to my son, Willie Ernest, thirty (30) acres of woodland, situated in Montgomery Co., Md., purchased by me from Horatio Trunnell, and being part of McKubbin's farm, commonly known as the 30-acre lot, bordering on the new county road, and running to the Metropolitan railroad.

I also devise to Catherine Connolly, mother of said children, the farm I purchased from Patrick O'Connor and heirs, containing one hundred acres, more or less, situated in Montgomery county, State of Maryland, and which adjoins the farm of Frank Perry's.

804*d*

804*e* Likewise I make, constitute, and appoint Catherine Connolly executrix of this my last will and testament, hereby revoking all former wills by me made.

In witness hereof I have hereunto subscribed my name and affixed my seal this 31st day of December, in the year of our Lord one thousand eight hundred and seventy-seven.

ALLISON NAILOR, SR., [SEAL.]

Subscribed by Allison Nailor, Sr., the testator named in the foregoing will, in the presence of each of us; and at the time of making such subscription the above instrument was declared by the said testator to be his last will and testament; and each of us, at the request of said testator and in *his* presence of each other, signs his name as a witness thereto.

804*f*

Witness:
JAMES ALMAN.
MALCOLM DOUGLAS.
C. M. HAMMETT.

Deposition of Bridget Kyne for Defendant. (*Filed Jan.* 14, 1881.)

JANUARY 13, 1880.

Met pursuant to agreement of counsel.

805 Present: Gen'l Rutherford and E. C. Carrington for complainants; whereupon BRIDGET KYNE, a witness a lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON, Jr.:

Q. Where do you reside?
A. On 14th street between B and C southwest, Washington, D. C.
Q. How long have you lived there?
A. About six weeks.
Q. Where did you live before that?
A. On K street between 20th and 21st street-.
Q. Do you know Kate Conley?
A. Yes, sir.
Q. How long have you known her?
A. Since she came to the country—the last sixteen years.
Q. Where did she live when you first knew her?

A. At our house.
Q. Where was that?
A. On K street.
Q. How long did she live with you there, and where did
806 she go after she left?
A. About a couple of months, I believe, and then she went to live on 16½ street, near K, I think, with a lady by the name of Mrs. Hunter, in service.
Q. How long did she live there?
A. About a year and a half—seventeen or eighteen months, anyhow.
Q. At the time she lived with you how old was she?
A. I thought she was about sixteen or seventeen; I am not sure.
Q. Do you know when she became acquainted with Allison Nailor, Sr.?
A. No, sir; I didn't live in Washington at that time.
Q. At the time she lived with you, in what manner did she behave herself?

(Objected to by Mr. Cole because it calls for the opinion of the witness.)

807 A. She behaved herself like a nice, proper, decent girl.
Q. In what manner did you discover her relations with Mr. Nailor?
A. Through a friend of mine who had come out where I was living, and I was asking for her, and he told me she had been living with Mr. Nailor.
Q. What did you do then?
A. The next time I came into Washington I went to see her.
Q. Did you talk with her about the matter?
A. Well, I was a long time there before she would see me; she didn't want to see me. I told the girl I was determined to see her, and wouldn't leave until I did, so she came down. I commenced talking to her, and she cried and told me how she was living
808 with Mr. Nailor, and seemed very sorry and downhearted about it.

(All conversation between the witness and Kate Conley objected to.)

Q. Where were you living at that time?
A. In Howard county, Maryland.
Q. How long did you continue to live in Howard county?
A. I really don't know how long after that; I think about a couple of years; I could hardly say.
Q. When did you leave there?
A. I moved in here to Washington on the 5th of March; it was six years ago next March.
Q. Were you in the habit of visiting Kate Conley after your return to the city?
A. Yes, sir.
Q. Where was she living and who was living with her?
A. She was living with Mr. Nailor on 14th street.

809 Q. Have you seen Mr. Nailor at that house frequently or not?

A. Yes, sir; I have seen him there at the house very often.

Q. State if you talked with him; and, if so, how often.

A. Yes, sir; I talked with him very often.

Q. On what subjects?

A. He would talk about on- thing and another; he talked with me about Katie and those children and what he would like to do for them.

Q. What would he say?

A. He would say he would like to leave them something to support them hereafter, if he was only able. That his property was in the hands of the law, and a divorce case going on at the time, and that his wishes was to live long enough to see her righted.

Q. How often has he talked with you in this manner?

A. Very often.

810 Q. Where was he when he talked with you about it?

A. Both in his own house and in mine, and in several other places where we would meet.

Q. When did he first commence talking to you about this matter?

A. About five or six years ago.

Q. When was the last time he talked with you about it?

A. About three years ago, as near as I can think.

Q. Have you ever heard him speak about a will. And, if so, detail the conversation.

(Objected to by Mr. Cole, because leading.)

A. Yes, sir. I declare I heard him speak about a will, but I almost forget what about it; but he did tell me what he did will the children.

Q. Have you seen him in the presence of these children?

811 A. Yes, sir; very often.

Q. What was his manner towards them?

A. Very kind, I thought, very loving to them. He would call Willie to him and say, comb father's head, and would sing to them, such things as that, very often. He seemed to be very much interested in the children.

Q. How would the children treat him?

A. Very kind to him; seemed to be very loving to him. There could not be any more affectionate children to him than they were, I thought.

Q. State if you saw him at any time when these children were sick?

A. Yes, sir; he was very fretful about them, very uneasy; seemed to take it very hard.

Q. Did you see him at any time shortly before the death of Willie and Edna?

812 A. Yes, sir.

Q. What did he say or do at that time, if anything?

A. I don't know. I forget if he did.

Q. Have you seen him in the presence of Kate Conley?
A. Yes, sir.
Q. What was her treatment of him?
A. Very kind.
Q. Did you see her at any time while he was sick?
A. Yes, sir.
Q. How did she act towards him then?
A. She acted very kind, very gentle. She would ask him what she could do for him, what she could get for him; if there was any little notions she could get for him.
Q. What were the habits of Mr. Nailor as to the use of intoxicating liquors at the times you saw him in the house where he lived?

813 A. I used to see him take a little liquor, about a couple of tablespoonsfull. I don't remember seeing him under the influence of liquor in the house, but I have seen him coming in under the influence of liquor, and she would get very angry with him.

Q. Did you hear them talk to each other about his getting intoxicated?
A. Yes, sir.

(Question and answer objected to because leading and because any conversation between the defendant Conley and Nailor is improper testimony, except for the purpose of showing the state of Mr. Nailor's mind at the time.)

Q. What was the condition of Mr. Nailor's mind during the time you knew him?

(Objected to by Mr. Cole.)

A. His mind was right.

814 Q. What evidence of insanity or imbecility did you see?

(Objected to by Mr. Cole.)

A. I didn't see any insanity about the man. I often came to him for advice, and I am sure he gave me good advice about my little business.

Cross-examined by Mr. COLE:

Q. Where were you born?
A. In Ireland.
Q. What place?
A. County of Galway.
Q. Do you know whether Kate Conley came from the same place in Ireland that you did?
A. Yes, sir.
Q. Did you ever see her in Ireland?
A No, sir, I never did; I don't recollect when I left Ireland; I wasn't quite a year old.
Q. How long have you lived in Washington?

815 A. I think about twenty years, if not over; over twenty years I know; I couldn't say how much.

Q. When did you first meet Kate Conley?
A. At our house; my father's house.
Q. Where did your father — at that time?
A. On K street between 21st and 22nd.
Q. When was that?
A. About sixteen years ago; we lived there sixteen years ago and after that.
Q. Were you living in your father's family at that time?
A. Yes, sir.
Q. Married or single?
A. I was single at the first time I saw her.
Q. When were you married?
A. I was married in 1865 or 1866, I forget which; about fourteen years ago, I think.
Q. What was your name before marriage?
A. Bridget Falan.
Q. Is your husband living?
816 A. No, sir.
Q. How long has he been dead?
A. Seven years next July.
Q. Did you live with him up to the time of his death?
A. Yes, sir.
Q. How long before you were married did you first meet Kate Conley?
A. I think it was about two years. I met her when she first came from Ireland. She came to our house.
Q. Do you know how she happened to come to your father's house?
A. Yes, sir. Her brother boarded with us and sent for her and directed her there.
Q. How long did she remain in your father's family?
A. I think it was about three months before she got a service place.
Q. Have you known her intimately ever since she came to this country?
817 A. Yes, sir; I have known her since she came to this country. She was in Washington while I was in the count-y.
Q. When did you go to live in the country?
A. I think it was in 1868, if I am not mistaken.
Q. About two years after you were married?
A. About eighteen or nineteen months after I was married; something like that.
Q. What time in the year were you married?
A. In July, I think
Q. Fourteen years ago last July?
A. I think so.
Q. How long was it from the time Kate Conley first came to your father's house until you were married?
A. I thought it was about two years, I said.
Q. About how frequently did you see Kate Conley after
818 she had come to this country up until the time you went to the country to live?

A. Very often. She used to come to the house, and if she didn't come I went to her service place.

Q. Did she visit you at your house after you were married frequently?

A. Yes, sir.

Q. When did you first see Mr. Nailor?

A. I think it was about seven years ago this March coming.

Q. Where?

A. At his house on 14th street.

Q. Were you introduced to him?

A. No, sir; I don't think I was.

Q. Did you speak to him?

A. Yes, sir; I think I did.

Q. Who else was present?

A. Kate Conley, I think.

Q. How did you happen to go there at that time?

A. I went there to see her.

Q. How long had she and Mr. Nailor been living together at that time?

A. I could not tell you; I didn't ask.

819 Had you ever been to the house where she and Mr. Nailor were living before that time?

A. Yes, sir; I think I was.

Q. More than once?

A. I couldn't say.

Q. How long did you live in the country?

A. I couldn't say.

Q. About how long?

A. I believe about five years or so; I almost forget how long.

Q. Was this visit to Kate Conley, at the time you met Mr. Nailor, soon after you returned from the country?

A. No, sir; the first time I met Mr. Nailor I lived in the country. That was seven years this coming March. About a year after I first saw Mr. Nailor I returned from the country to the city.

820 Q. When you first saw Mr. Nailor had you heard that he and Kate Conley were living together?

A. Yes, sir; I heard they were living together.

Q. How long before meeting him had you so heard?

A. I couldn't say; I forget how long; I don't think it was long.

Q. Some time wasn't it?

A. I don't know; I have forgot.

Q. Did you hear it the same day that you first saw him?

A. I have forgot; I couldn't tell.

Q. How often did you see Kate Conley while you were living in the country?

A. I couldn't tell you that; I don't know how often I saw her.

Q. Did she ever go out into the country to visit you?

A. No, sir; she did not.

Q. Did you generally call upon her when you came into the city?

A. Yes, sir.

Q. How often did you generally come into the city while you lived in the country?

A. I couldn't say how often I came into the city.

821 Q. As often as once a month?

A. I couldn't say.

Q. As often as once a year?

A. I couldn't say; what I don't remember I won't say.

Q. Can't you tell whether you came to the city as often as once a year while you lived in the country?

A. No, sir; I don't remember how often I came.

Q. I do not ask you now how often you came, but whether you did not come at least as often as once every year; can't you tell that?

A. No, sir; I cannot.

Q. Can you tell about how many times you came to the city while you were living in the country?

A. No, sir; I cannot; I never kept any account, and I don't know how often I came.

Q. Did you come frequently or seldom?

A. I came seldom.

822 Q. Was your husband living at the time you say you first met Mr. Nailor at the house on 14th street?

A. Yes, sir. I met Mr. Nailor in March seven years ago, and my husband died the July following seven years ago.

Q. And you removed to the city about how long after your husband died?

A. The March following.

Q. Where did you first live after removing to the city?

A. I lived on K street between 20th and 21st, and lived there until about six weeks ago.

Q. Have you been intimate with Kate Conley since you returned to the city?

A. Yes, sir.

Q. Visited her frequently?

A. Yes, sir.

Q. And has she visited you frequently?

A. Well, not so often as I have visited her.

823 Q. How far did you live from her when you lived on K street?

A. Well, you can partly guess that for yourself. I lived on K street and she on 14th and afterwards on 12th.

Q. About how often have you visited her since you returned to the city?

A. I couldn't tell that. I was most there every day; if not, every other day.

Q. Ever stay there any nights?

A. Yes, sir; I stayed there when the children were sick; not when they had scarlet fever, but when Walter died, and also when Mr. Nailor was sick, to help her wait on him.

Q. When did you first hear that Mr. Nailor had a wife living, and family?

A. I couldn't hardly say when I heard it.

824 Q. Was it before you first saw him or afterwards?
A. I couldn't say, sir.
Q. You knew it, did you not, when you removed back to the city?
A. I couldn't say, sir.
Q. Well, you learned it soon afterwards, did you not?
A. I couldn't say.
Q. Are you sure that you ever heard it?
A. Of course I heard it, because he as good as told me himself that there was a lawsuit there.
Q. Well, you continued your intimacy with and visits to Kate Conley after you learned that, as before did you not?
A. Yes, sir; I did.
Q. Have you any children?
A. Yes, sir.
Q. Male or female?
A. I have three boys and two girls.
Q. How old are they?
825 A. My boy is thirteen years old last July.
Q. Is he the oldest of the children?
A. Yes, sir; that is the oldest one of the children, and the girl is eleven.
Q. How old is the youngest?
A. The youngest is seven years old the 6th of this January.
Q. And you know of Kate Conley's being arrested for stealing about the year 1865 or 1866?
A. No, sir; I did not.
Q. Never heard of it?
A. No, sir; not as I recollect.
Q. Didn't you know of her being arrested for stealing in June, 1865?
A. No, sir; I don't recollect about it.
Q. Do you remember of her being arrested for stealing in December, 1865?
A. No, sir.
Q. Did you hear of her being in jail for stealing in December, 1865, and January, 1866?
A. No, sir; I don't recollect about it.
Q. Did you never hear of it?
826 A. No, sir.
Q. Do you know a man by the name of James Brannan?
A. No, sir; I don't know such a man.
Q. Did you ever know a man by the name of Owen Kelly?
A. No, sir.
Q. Did you ever know a man by the name of George H. Stewart?
A. No, sir.
Q. Did you ever know of Kate Conley's living with or in a family of either of the above named?
A. No, sir; I did not.
Q. Don't you know that a man by the name of James Brannan had a saloon or restaurant on the opposite side of the street from

Corcoran's Art Gallery, on 17th street, in 1865, and don't you know that Kate Conley worked there for him?

A. I don't recollect; it may be, but I don't recollect.

Adjourned until Wednesday, Jan'y 14, at 3 o'clock p. m.

827 JANUARY 14, 1880.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainant-, and Gen'l Rutherford and E. C. Carrington, Jr., for defendant; whereupon the cross-examination of the witness BRIDGET KINE is resumed:

By Mr. COLE:

Q. Could Kate Conley have been in jail from the 26th of December, 1865, to the 1st of February, 1866, without your knowing it?

A. No, sir; I didn't know it.

Q. The question is, could she have been in jail during that time and you not know it?

A. I did not know it, sir.

Q. Were you not very intimate with her about that time?

A. I was always intimate with her, but I did not know anything about her being in jail.

Q. Well, is it likely that she could have been in jail during
828 the whole month of January, 1866, without you knowing it?

A. I did not know she was in jail; if I had known it she wouldn't have been there; I would have got her out, but I didn't know it.

Q. Do you swear positively that you never heard of Kate Conley's being in jail until I asked the question on yesterday?

A. Not as I recollect.

Q. Of whom did you get permission to move into the house where you now reside?

A. I bought Mr. Dailey out.

Q. Who claims to own the house you are now living in?

A. Miss Conley, I think; Kate Conley.

Q. Is it one of the houses in controversy in this suit?

A. I don't know anything about that.

Q. How much rent do you pay her?

A. Twenty-five dollars a month.

Q. Have you paid her any yet?
829 A. Yes, sir.

Q. How much?

A. I have paid her six months.

Q. In advance?

A. Yes, sir.

Q. How did you pay it; in money or otherwise?

A. In money; cash money.

Q. All at one time?

A. No, sir; not all at one time.

Q. How many different times?

A. Well, I couldn't say; I won't say what I don't remember.

Q. Did you pay it to Kate Conley personally.
A. Yes, sir.
Q. Take her receipts for it?
A. Yes, sir; I have got he- receipts to show for it.
Q. Who wrote the receipts?
A. I couldn't tell you. She gave me a clear receipt, and I can't tell you any more.
Q. Was anybody present when you got the receipt?
A. Yes, sir.
Q. Who?
830 A. There were several parties present. I recollect my brother, John Folen, and my boy, thirteen years old, and a girl that is living with me.
Q. Anybody else?
A. Several more, but I forget who they were.
Q. Did any of those present write the receipt?
A. I don't know who wrote the receipt. She gave me the receipt in full.
Q. Who was it signed by?
A. Kate Conley, I suppose.
Q. Don't you know?
A. I said Kate Conley.
Q. Are you certain it was signed by her?
A. Well, I suppose so; the name is there. I don't suppose any one else would sign her name, at least her mark. She don't write.
Q. How much is the receipt for?
A. Six months, I told you.
831 Q. How much money?
A. One hundred and fifty.
Q. More than one receipt?
A. One receipt in full I got.
Q. But you paid the money on several different occasions?
A. I give her the money. I don't know what occasions. She got the money and I got a receipt for it.
Q. Have you not just testified that you didn't pay the money all at one time?
A. No; I did not pay the money all at one time.
Q. When did you pay the last?
A. I don't know; I couldn't say.
Q. About how long ago was it?
A. I don't know; I didn't keep any account.
Q. Was it since you moved into the house?
A. I don't know.
Q. Did you pay any money before you moved into the house?
A. I don't know; I forget.
832 Q. How many times have you paid her money?
A. I don't know how many times; I often gave her money and paid her money.
Q. Can't you tell whether you paid her all the money before you went into the house, or a part of it?
A. No, sir.

Q. Did you pay her any when you got the receipt?
A. I don't know whether I did or not.
Q. Now, is it not a fact that you went into the house with an understanding between you and Kate Conley that you need not pay any rent until after the termination of this suit?
A. No, sir; it is not; nothing of the kind. I will take a Bible oath right here that it is nothing of the kind.
Q. Are you not now taking a Bible oath?
833 A. Yes, sir; I took an oath yesterday to tell what was right and nothing but what was right. No, not a month's rent did she ever offer or pay to me.
Q. Did not Kate Conley tell you that she wanted you to go into the house to prevent the Nailors from taking possession of it?
A. No, sir; she did not tell me anything of the sort. She told me to go into the house; that I could do more there than where I was; that I might get boarders there; but she didn't mention the Nailor family.
Q. When did you pay her the last rent?
A. Well, I couldn't say, but I gave her the $150, and I have got a receipt for it.
Q. Can you tell how much you gave her at any one time?
A. No, sir; I couldn't tell that.
834 Q. What business are you in?
A. Restaurant.
Q. What do you keep in your restaurant?
A. Just drink; and I have got two boarders and my own family, and a free lunch at dinner time.
Q. What sort of drink do you sell?
A. Well, liquor, beer, wine, soda water, ginger beer, and all sorts of liquors.
Q. Were you engaged in the same business before you came to 14th street?
A. No, sir; I kept a grocery.
Q. Sell any liquors on K street, between 20th and 21st streets?
A. No, sir; I only kept a little grocery.
Q. Who did you rent your property [to] up there?
A. My brother, John Folen.
Q. How much rent did you pay?
A. I didn't pay none; he boarded with me for the rent;
835 the house used to rent for twenty dollars.
Q. How long have you lived where you now do?
A. I think about six weeks.
Q. Did Mr. Nailor ever call on you at your own house?
A. Yes, sir; he very often came to my house in passing by to the farm or to Georgetown.
Q. Alone?
A. Sometimes alone, sometimes she would be with him, and sometimes his little son Willie.
Q. Did you ever meet him elsewhere than at the place where he was living and at your house?
A. No, sir; not that I know of, except on the street.

Q. Are you certain that you never met him at any places except where he lived, at your house, and on the street?

836 A. As far as my memory calls for, I don't recollect.

Q. Where did you first meet him, at your house or where he was living?

A. In his own house.

Q. Where was that?

A. On 14th street.

Q. In the house in which you now live?

A. Yes, sir.

Q. In your direct examination you say you met Mr. Nailor both in his own house and in yours, and in several other places where you would meet; what other places do you mean?

A. I mean several other places, on the street, sometimes in Georgetown, sometimes in the city, and sometimes in the Agricultural.

Q. Did he frequently talk to you about making some provision for Kate Conley and her children?

A. Yes, sir; very often about doing for her and the children.

837 Q. Nearly every time you saw him?

A. I couldn't say nearly every time. I saw him very often.

Q. Did you continue to see him often down to the time of his death?

A. Yes, sir; very often.

Q. Did he continue to speak frequently to you about making a provision for Kate Conley and her children down to the time of his death?

A. Not the last years, of course, because he had done so. He told me what he had left them, and said he was sorry he had not money to give them, because he did not want Katie to have any difficulty, and that he knew she would have.

Q. Did Kate Conley ever say anything to you about Mr. Nailor's making a provision for her and her children?

838 A. Not until after he had give it to her. Mr. Nailor told me himself first about it.

Q. Did she say anything to you about it before he had told you he had done it?

A. No, sir.

Q. Did Mr. Nailor ever say anything about doing it in her presence?

A. I don't know anything about that.

Q. Did he ever in her presence when you were present?

A. I don't remember.

Q. Do you mean to say, in your direct examination, that Kate Conley was kind to Mr. Nailor?

A. Yes, sir, I do; and very kind—the kindest, I think, I ever did see, both kind and good to him.

Q. How did she show her kindness?

A. Why, if he was ill or anything she watched over him night and day, asked him if there was anything she could do

839 for him, and done so whatever it was, and forgot every other thing to attend to him.

Q. Well, that was when he was sick; it is only natural for a woman to be kind to one who is sick. She was not kind to him when he was well, was she?

A. Yes, sir; she didn't make no difference, she always treated him the same, well or sick.

Q. When he was well, how did she show or indicate her kindness to him?

A. She showed it the same way, waited on him, even helped him on with his overcoat, would put his scarf around his neck, opened his oysters for him.

Q. Well, then, you mean to say that she was very kind and devoted to him?

A. Yes, sir; she was very kind to him.

840 Q. He did not seem to be fond of her, did he?

A. Yes, sir; very fond of her too.

Q. Did he not scold her and act cross towards her?

A. Not when with me. I never saw him cross to her.

Q. Did you ever see them together much?

A. Yes, sir.

Q. Did he always seem willing and anxious to please her?

A. I don't know. I don't understand you.

Q. Please her by doing what she wanted and asked him to do?

A. I don't know whether he did or not. I have seen him going out when she wanted him not to go. I don't know that he was the kind of man you could do that to; he seemed to be a determined kind of a man.

Q. You never heard him scold her?

A. I don't think I did.

841 Q. Did he ever say anything to you about her when she wasn't present?

A. Nothing; no more than in the first commencement of the years he said what he would like to do for Katie and the children; nothing but about their own business.

Q. Then he never talked with you about her when she was not present, except to say that he wanted to do something for her and the children?

(Objected to by Mr. Carrington as assuming a state of facts which the witness has not testified to.)

A. Not as I recollect of. He has always talked about how good and kind she was; nothing but what I have stated before.

Q. Then he talked very kindly about her to you?

A. He talked how good she was to him.

842 Q. Did he ever ask your opinion as to whether you thought it would be well for him to make some provision for Kate and the children?

A. No, sir; because he knowed his own business. He forgot more than I ever learned. To ask me such a question as that!

Q. How do you know that he ever forgot anything?

A. I said he forgot more than I ever learned; not that I said he

forgot anything. I said he always knew his own business without asking me such a question. He knew what he was going to leave them when he got ready.

Q. Did you ever suggest to him that it would be well to leave them something?

A. No, sir. He always suggested to me what he would like to leave them. It was not my business.

Q. You say in your direct examination that he told you
843 what he had willed the children. When was this?

A. I declare I forget. So he did tell me.

Q. How long ago was it?

A. I couldn't say. I kept no memorandum. I know he told me.

Q. How long before he died?

A. I couldn't say.

Q. Was it a month?

A. I don't know how long it was.

Q. Can't you tell whether it was shortly before he died or some time?

A. No, sir. He told me, but I forget what time.

Q. Was it as much as a year before he died?

A. I couldn't say.

Q. Why won't you fix a time at which any of these matters occurred?

A. Because I don't recollect.

Q. Do you mean to say that you can't tell whether it was
844 a month, a year, two years, or three years before he died; that you are unable to fix or approximate the time in any degree?

A. It was no three years before he died, nor two years, but I couldn't tell no certain time.

Q. Can't you tell whether it was a year or not before he died?

A. No, sir.

Q. Did he tell you that he had given Kate Conley anything?

A. I don't recollect.

Q. Did Kate Conley ever tell you he had given her anything?

A. I don't recollect.

Q. What did he say he had willed to the children?

A. I couldn't say. He told me what it was, but I have forgot. I didn't think it interested me, and I didn't recollect.

Q. Do you mean to say that Kate Conley was always kind and gentle towards Mr. Nailor?

A. Yes, sir; I do.

845 Q. Did you never know her to get angry with him?

A. Never, only when he would come in with a little too much liquor, and she would say, You had better stay in the house than come home that way; but I never did see her get real angry with him.

Q. Then you didn't mean to say in your testimony on yesterday that when Mr. Nailor would come in under the influence of liquor that she would get very angry with him?

A. I said the angriest time I ever seen her with him was when he came in under the influence of liquor. She would be angry with him doing so.

Q. Then you do mean to say that when he would come in under the influence of liquor that she would be very angry with him?

846 A. She would be angry with him because he would talk about things disagreeable to her, and she would be very angry with him for even injuring his health.

Q. What would he talk about that was disagreeable to her?

A. Oh, well, I don't know; just like any other man that has taken too much; talk foolish, I suppose.

Q. Talk about his family?

A. I don't know.

Q. Don't you remember that when he would come in intoxicated he would talk about his wife and family?

A. I don't know. I don't think I ever heard him talk about his wife. I have heard him talk about his family, such as his sons, and I have heard her stopping him and saying that was between him and them.

Q. How did she treat him when he came home intoxicated,

847 kindly or roughly?

A. Well, I told you she didn't like it.

Q. Well, how did she treat him?

A. I said she didn't like it; of course I didn't remain there to watch them.

Q. How did she treat him while you were there?

A. I said she didn't like for him to come home tight.

Q. Did she scold him on those occasions?

A. She didn't scold him, but she told him he had no right to do that.

Q. Tell him kindly or threateningly?

A. Well, she would be kind of angry with him, and would tell him that he was injuring himself and making it unpleasant for her and the children.

Q. How often did you see him intoxicated?

A. Oh, well, I couldn't say that.

Q. Frequently?

848 A. No, sir; not very often.

Q. Did you see him drink most always when you went to his house?

A. Yes, sir; I seen him drink when I went to his house a little milk toddy. I never saw him drink any out of the way in his own house.

Q. Who mixed it for him?

A. Well, I couldn't say. Sometimes himself, sometimes the colored girl, and sometimes her.

Q. Who do you mean by her?

A. Kate Conley.

Q. Was there a drinking saloon kept in Mr. Nailor's house dur-

ing any part of the time you knew him while he lived with Kate Conley?

A. Not as I know of.

Q. Any grocery?

A. I heard her say she kept a grocery, but I didn't go there; she lived on 17th street then.

Q. Did she not keep a grocery and drinking saloon in the
849 house on 14th street?

A. I don't know anything about that; I never seen it there.

Q. Did you ever have in your possession a $300 improvement bond, payable to Mr. Nailor, being No. 20,012?

A. I don't know what the number was; it was a certificate for bond I had. I don't know whether it called for $300 or more.

Q. Where did you get it?

A. Catharine Conley gave it to me.

Q. When?

A. I couldn't say when, but I think the first time was when her boy Walter died.

Q. Why did she give it to you?

A. She gave it to me because I loaned her money on it at the time the boy died, and she gave it to me until such time as she could give me the money.

Q. What did you do with the bond?

A. I returned her the bond.

Q. When?

850 A. About four or five months ago; it may be more or less; I can't say.

Q. Do you remember whether Mr. Nailor's name was on the back of the bond in writing when you got it?

A. Well, I am not sure, but I think it was.

Q. Do you know what Kate Conley did with it after you returned it to her?

A. No, sir; I do not.

Q. Did you not tell Mrs. Ballinger that you bought the bond from Mr. Nailor?

A. No, sir.

Q. Did you not get the bond since he died?

A. I had the bond before he died. I had the bond at the time he died, if I am not mistaken.

Q. Are you certain that you did not get the bond from Kate Conley since Mr. Nailor died?

851 A. I am not certain, but I think I had the bond at the time Mr. Nailor died.

Q. Do you know Thomas McCabe?

A. No, sir. Oh, Mr. McCabe; yes, sir.

Q. Know him quite well?

A. No, sir; slightly acquainted.

Q. What part of Ireland is he from?

A. I couldn't say. I don't know him that well.

Q. Ever talk with him any about this case?

A. Not as I know of. I am slightly acquainted with Mr. McCabe to give him the time of the day when I meet him.

Q. Don't you think that Kate Conley ought to succeed in this case?

A. I am no lawyer to think anything, of course. I don't know anything about law.

Q. Don't you hope she will succeed?

A. Yes, sir; I do. I would be very much rejoiced.

Q. How many children did Kate Conley have?

852 A. Three that I know of, and another that she told me she had by Mr. Nailor, and I seen three.

Q. When did each one of them die?

A. I couldn't tell. I have got a bad recollection for dates. I think Walter died three years ago this January, and the other two died together since then.

Q. Did you see Kate Conley between the time you left here last evening and the time you returned here this evening?

A. Yes, sir. I stopped there as I was coming here this evening.

BRIDGET KYNE.

Subscribed and sworn to before me this 14th day of January, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned to a day to be fixed by consent of counsel.

853 *Deposition of Mary E. Ballinger for Defendant.* (*Filed Jan. 14, 1881.*)

JANUARY 16, 1880.

Met pursuant to agreement of counsel.

Present: E. C. Carrington, Jr., and Charles Thompson, Jr., for defendant, and C. C. Cole, Esq., for complainants; whereupon MARY E. BALLINGER, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON:

Q. Where do you reside?

A. In the rear of 14th street, at the Commissary, in Washington, D. C.

Q. How old are you?

A. Fifty six last October.

Q. Are you married?

A. Yes, sir; I have been married seventeen years the 1st day of last April.

854 Q. How long have you been in Washington?

A. Six years the 9th of next March.

Q. Where were you living before you came to Washington?

A. Fairfax county, Virginia.

Q. How long had you lived in Virginia?

A. All my lifetime in the same county.

Q. Did you know Allison Nailor, Sr., now dead?
A. Yes, sir.
Q. How long did you know him?
A. To the best of my knowledge, three years before his death.
Q. How did you become acquainted with him?
A. By living second door from him and by his little children. He had a little boy about the same age as my little girl, and they became very intimate.
Q. How did that make you acquainted with him?
A. By my setting on my porch and he on his; we used to
855 talk about the children. In that way I got acquainted with him.
Q. Did you visit his house?
A. Not until after I got acquainted with the old gentleman.
Q. Then?
A. Yes; the way I came to visit his house was that I used to go in the morning and get milk from Miss Kate; she kept a cow.
Q. Did you ever live in the house with Mr. Nailor and Kate Conley?
A. Yes, sir.
Q. Under what circumstances did you go to live with them.
A. The little boy was taken sick, and I was very fond of the child. I heard he had scarlet fever and I went to see him. The old gentleman asked me if I would assist her in taking care of him. No
856 person would go in; the people were afraid of giving it to their children. I stayed until after both children were dead and buried.
Q. Have you had many conversations with Mr. Nailor?
A. Yes, sir; from that time up to his death there was scarcely a day that I didn't have a conversation with him.
Q. Upon what subjects would you converse?
A. We were both old Virginians, and the most of our subjects were old-time things. He would tell me of things that passed in his younger days, and he knew a good many of my mother's people, and we used to talk about old times and a good deal about the children.
Q. What did he say about the children?
A. He would say that they were affectionate and interesting.
857 After their death he used to talk a good deal about them. That was the most of our conversations.
Q. What would he say about them after their death?
A. He would say that if they had lived they would have been a great comfort to him; that his little boy could have driven the buggy for him.
Q. In what manner did he act at the time of their sickness?
A. He appeared to be in a great deal of trouble for fear he would lose them.
Q. Tell me how he appeared—what he said and did?
A. Well, he would coax and beg them to take their medicine, kiss them, and do everything he could to make the oldest one take the medicine. He would keep around the bed and ask him to take it,

tell him he would buy him a poney and take him to the Rockville fair. He kept a horse and buggy there all the while to send
858 for the doctor if there was any change in him.

Q. What evidence of anxiety, if any, at their sickness did he betray?

A. He betrayed a great deal. He acted as though he would give everything he was worth to have them spared, and I believe positively he would.

Q. What evidence of distress, if any, at their death?

A. He cried as hearty as you ever saw a man after their death. The night Willie died he didn't sleep any scarcely, but stood around the bed.

Q. Did you have any conversation with him at the time of the funeral? If so, state it.

A. I stayed with him while Miss Kate went to the funeral, and he talked a good deal about it. He said it was much better for the child to go than for him, for he said he knew he would have
859 a hard life to live when he was gone, and that he should soon follow him. This was at the funeral of Willie; the other one died the next day.

Q. By what names did he address the children?

A. Willie and Edna were the names he always called them by.

Q. In speaking to them, how were they addressed?

A. He used to say, Come to papa, comb papa's head, hand papa his boots. He always called himself their papa when I heard him.

Q. Did you frequently talk with him about them after their deaths?

A. Yes, sir.

Q. What would he say?

A. He was always talking about how Willie could drive the buggy for him; that he would give him the lines and he would
860 drive out to the farm; what a great help he would have been to him in a short time if he could have lived.

Q. I wish to know if he gave any evidence of distress when talking of their death?

A. Yes, sir; about Willie. He seldom spoke of the little girl. Willie was the one he most often spoke about it.

Q. What evidence?

A. I never saw him cry after their death, but I could tell from his conversation that he was distressed.

Q. Did he cry at their death?

A. Yes, sir; he did, after Willie, very much, but not after the little girl.

Q. Did you see Mr. Nailor and Kate Conley frequently together?

A. After the death of the children up to his death I did. There was scarcely a day that I didn't.

Q. In what manner did they treat each other?

861 A. They treated each other pretty much as man and wife. That is the only way I can answer that question.

Q. How did she act toward him when he was sick?

A. She was very kind to him, as kind as she could be.

Q. In what manner did she show her kindness?

A. By doing everything for him that she could do to make him comfortable, and nourish him in every way that she could.

Q. What were his habits as to the use of intoxicating liquor?

A. He used to take milk punches and apple toddy and such as that when I was by.

Q. How much would he take and how often?

A. I really do not know. Sometimes I might see him twice a day, sometimes more, sometimes not as much.

Q. How much would he take at a drink?

862 A. I never noticed particularly. I would see her fix it up for him and hand it to him, but I never noticed particularly.

Q. Have you seen him intoxicated?

A. I think I did once while I lived with him.

Q. What was the condition of his mind during the time you knew him?

A. I never seen any signs of insanity or anything like that about him.

Q. What was the condition of his memory?

A. He had an excellent one, I think. He could recollect things a number of years back, and talked about them.

Q. Was he a person to be easily influenced or otherwise, in your judgment?

(Objected to by Mr. Cole.)

863 A. I never thought any person could influence Mr. Nailor, so far as I knew him. He was a very positive man, in my judgment.

Q. Did you ever hear Kate Conley endeavor to influence him in reference to anything?

(Objected to by Mr. Cole.)

A. Yes, sir; I have.

Q. What was it?

A. In regard to going out into the cold and exposing himself.

Q. What would he say and do?

A. He would tell her he was going, and he would get up and go, and she couldn't persuade him not to.

Q. In what manner has Kate Conley behaved herself during the time you have known her?

A. I never seen anything amiss by her. Of course what she done we all know, but outside of that I never saw anything amiss by the woman.

Q. What visitors were in the habit of coming to the house during the time you lived there?

864 A. There was a good many come there, some to see me. There was no men come there, except on business. She had some women to come there, but I didn't know them. There was no one that came there but respectable people; if they were not, I didn't know it.

Q. Do you remember a conversation that occurred on Christmas day, 1878? And, if so, state it.

A. I remember a conversation between me and the old gentleman. I went into his room, and he was eating his breakfast. He was alone, and he said he was in a great deal of trouble. I asked him what troubled him. He didn't call any name, but he said they were trying to kill him, and they would do it, he said. I laughed
865 at him, and told him I guessed not. He said they were trying to starve him and would fight over his dead bones after he was gone.

Q. Were you with him during his last illness?

A. Yes, sir.

Q. Did he say anything then about the members of his family?

A. Not unless he was asked, when she would ask him if he wished to see any of them, and he would say no; that was the answer he always made.

Q. Was he baptized or not during his last illness?

A. Yes, sir; by a Catholic priest the day before he died.

Q. Do you know Mr. Washington Nailor?

A. Yes, sir; by sight.

Q. Did you have any conversation with him about this case?

A. Yes, sir. He was at my house, I guess, a couple of months ago, and talked some about it.

866 Q. What did he say about it?

A. He asked me about her and about being there; some few things. I declare I can't recollect now. I paid little attention. He said he was going to gain the case.

Q. Did he say anything to you about your being a witness on his side of the case?

A. Only that he said he thought it was likely I would be a witness for him, being there in the house, but that he found that I did not know anything that would be of any benefit to him at all.

Q. Say anything about your being a witness on the other side from him?

A. He asked me if I was going to be one for her. I told him I was not, that I knew of, for I did not suppose I would be of any benefit to either party, and don't suppose that I am yet.

867 Cross-examined by Capt. COLE:

Q. Is your husband living?

A. Yes, sir.

Q. How long have you lived where you do now?

A. I think I moved there in October last.

Q. Where did you live before that time?

A. With Miss Kate Conley, on 12th street.

Q. How long did you live with Kate Conley?

A. Thirteen months.

Q. Were you living with her when Mr. Nailor died?

A. Yes, sir.

Q. How long had you been living with her then?

A. I can't tell exactly, but I think about five months.

Q. What time in the year did you first go there to live?
A. I think we went there a year ago last October; I am not certain.
868 Q. Was it in the fall or summer?
A. In the fall. We moved the same day Mr. Nailor died.
Q. Did your husband live there with you?
A. Yes, sir.
Q. Have you any children?
A. None of my own; I have a little adopted girl.
Q. How old?
A. Seven years last October.
Q. How long has she been living with you?
A. Six years last August.
Q. Did she live at Kate Conley's with you?
A. Yes, sir.
Q. Did you take your meals at the same table with Kate Conley while you lived there?
A. No, sir; at my own table.
Q. Then you simply had rooms in the same house with her?
A. Yes, sir.
Q. What rent did you pay?
A. I don't know, sir; I paid no money rent; I did sewing
869 for her and the old gentleman. He offered me the rooms for company for him.
Q. How many rooms did your family occupy?
A. I had three rooms.
Q. Where was the house situated?
A. On 12th street.
Q. Where Kate Conley now lives?
A. Yes.
Q. Did you pay her any money rent after Mr. Nailor died?
A. No, sir; I stayed there just for company for her.
Q. Why did you leave?
A. My rooms were up-stairs; I am old, as you see, and I didn't like going up and down stairs, and I didn't like the neighborhood on account of my little girl, and that is the reason I left. Another reason was that I didn't want to get mixed up in this suit.
Q. What objection had you to the neighborhood?
870 A. There was a restaurant or tavern close to us, and it was very noisy, particularly at night. That is the objection I had to it.
Q. A good many persons about there in the nighttime?
A. Yes; colored people would gather around there and be noisy. They seemed to be going all the time.
Q. Were there many persons who called on Kate Conley while she lived there?
A. Not very many. Some people on business called there. She hadn't many callers.
Q. Ever know anybody to call there in the evening?
A. Yes, sir. I have had friends of mine from the country to call there after night.

Q. Where were your rooms?
A. My rooms was in the third story, but after Mr. Nailor died I moved down and had a room on the second floor
871 adjoining hers.
Q. Did you know that Mr. Nailor had a wife living?
A. Yes, sir.
Q. When did you first learn it?
A. I knew it before I went to live with them. I heard the neighbors say he had a wife living. I couldn't say when, but not a great while before I went to live with them.
Q. Did Mr. Nailor and Kate Conley occupy the same sleeping room?
A. I think they did; I don't know it.
Q. Did you so think at the time you were living there with them?
A. Yes, sir.
Q. How long did you live the second door from Mr. Nailor?
A. Just about a year.
Q. When and where did you first see Mr. Nailor?
A. I think the first place was seeing him coming home
872 in the evening in his buggy, and getting out and going into his house.
Q. When and where did you first meet him to speak with him?
A. He was sitting on his balcony at his home, and I was sitting on my porch. That was the first time I ever spoke to him.
Q. That was after you went to live the second door from him?
A. Yes, sir; at the same time I lived the second door from him.
Q. How long was it after you went to live the second door from him?
A. I couldn't tell, but it was several months.
Q. You went there to live in April?
A. Yes, sir, and this must have been along in June. It was warm weather; we were both sitting out.
Q. Where was Mr. Nailor living then?
A. On 14th street, between B and C.
Q. Where did you remove to when you left the house the second door from Mr. Nailor?
873 A. Right back where we live now.
Q. How far was that from where Mr. Nailor lived?
A. On the same square, but back instead of front.
Q. Who owned that house?
A. A man by the name of Digney owned it at that time. It has passed into another man's hands since then.
Q. How long did you live there?
A. Indeed I couldn't tell you.
Q. Where did you remove to?
A. We moved from there with Mr. Nailor.
Q. When and where did you first meet Kate Conley?
A. I met her the first time I ever spoke to her in my life in her own yard.
Q. Was that before or after you first spoke to Mr. Nailor?

A. It was after I spoke to Mr. Nailor a good many times before I ever spoke to her.

874 Q. When did you first go into the house where Mr. Nailor and Kate Conley were living?

A. I couldn't tell, but I know what carried me in.

Q. What was it carried you in?

A. I had made a very handsome quilt, and the old gentleman had seen me working on it on the porch, and he told her about it, and she wanted to see it, and asked me to bring it in. She was never in my house until since we moved over where we are now.

Q. How long had you been living near them at that time?

A. I couldn't tell you; it was along in the summer.

Q. In what year was it?

A. Year before last. It was the year before the children died, I know.

Q. Did you know at that time that Mr. Nailor had a wife living?

A. Yes, sir.

875 Q. Did you know that he and Kate Conley were living together and associating as man and wife do?

A. I had heard so.

Q. From that time on did you visit them very frequently until you went to live in the house with them?

A. I was in there tolerable often. I would go in every morning to get milk; that was pretty much all the visiting of her I did.

Q. Did she give you the milk or did you buy it?

A. She gave it to me.

Q. In the conversations with Mr. Nailor about his early life in Virginia did he speak of any matters familiar to you so that you could see whether his recollection of them was accurate?

876 A. No, sir; he would speak of people that I had known and heard of, and he would always speak as though he knew it was so, and he would talk it over again in a very correct manner.

Q. But still you never heard him speak of a fact which he said occurred in his early life with which you were familiar, and knew that he stated correctly?

A. No; I don't know that I ever did, because he was older than I was, but he spoke of things I had often heard of.

Q. Did he seem to like to talk of his early life?

A. Yes, sir; very much. I never seen any one as fond of talking as he was.

Q. Was it not the burden of his conversation?

A. Yes, sir; it was.

Q. Did he speak of his childhood and boyhood at his father's house?

877 A. Yes, sir; he used to speak often of his mother. He said, I think, his mother was left a widow when he was about nine years old, and how he used to work and manage from that time.

Q. Did he talk much of the occurrences of late years after he left his wife?

A. Not so much as he did of his younger days. I never heard him mention leaving his wife in my presence.

Q. Did he ever speak of his wife to you?

A. No, sir; I never heard him mention her name in my life.

Q. How did his recollection seem to be in relation to matters that occurred only a few days or a few weeks before he would speak of them, if you know?

A. He appeared to be perfectly right. He would always talk it over just right to me.

Q. When did you last see Kate Conley?

A. To-day.

Q. Did you see her yesterday?

A. Yes, sir.

878 Q. Where did you see her?

A. At my house.

Q. Did you and she walk out together?

A. Yes, sir.

Q. Where did you go?

A. To several places.

Q. Name them.

A. We came round here; we stopped at a store; there was no other place.

Adjourned until Saturday, January 17, 1880, at 3 o'clock p. m.

JANUARY 17, 1880.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and E. C. Carrington, Jr., and Charles Thompson, Jr. for defendant; whereupon the cross-examination of the witness, MARY E. BALLINGER, is resumed.

By Mr. COLE:

879 Q. Which one of the children died first?

A. Willie.

Q. Did Mr. Nailor attend his funeral?

A. No, sir.

Q. Was he buried from the house?

A. Yes, sir.

Q. Did Mr. Nailor speak to you frequently about his being near the end of his life?

A. Yes, sir; there was scarcely a day but what he spoke of it.

Q. Did he seem to be despondent, generally?

A. No, sir; not so much so.

Q. What was the condition of his health during the time you knew him?

A. His health was very poor from the time I knew him up to his death; he was very feeble.

Q. Stay in the house a good deal?

A. Not when he was able to go out, if it was fine weather. He never went out in falling weather, but if the sun shone out he went out pretty much every day.

880 Q. Did he do any work or business while you knew him?

A. He didn't do any work; I don't know about his transacting any business.

Q. When he was able to go out was he generally away from the house the greater part of the day, or did he return to the house frequently during the day?

A. When he moved over on 12th street he used to go around to the stables and come home and get something to eat and go back again Before he moved he would stay all day sometimes and sometimes come home and go out again in the evening, but not so much as he did on 12th street.

Q. Was he frequently confined to his room or bed while you knew him?

A. He was always, when in the house, lying down part of
881 the day. He would be up and down through the day.

Q. While you were there did you see him every day?

A. Yes, sir; he would be complaining and I would always go down there and speak to him, and ask how he was.

Q. About how frequently did you see him, after you became acquainted with him, before you went to live in the same house with him?

A. Before I moved second door from him I would see him nearly every good day, but there would be bad weather and I might not see him for a week or so; this was when the children were taken sick.

Q. How often did you see him drink anything intoxicating?

A. I couldn't tell that; I paid no particular attention; I did see him take his toddy, but I couldn't tell how often.

Q. Very frequently?

882 A. Yes; towards his last days he used to take it, I suppose, two or three times a day, but I don't know.

Q. Where did you generally see him drink?

A. In his dining-room; that is the only place I ever saw him drink at any time.

Q. What did he generally drink?

A. He drank milk punch, and sometimes warm apple toddy; I have seen [it] fixed for him. I have never seen him drink anything but that.

Q. Who generally fixed it for him?

A. Miss Kate.

Q. Did he generally ask her for it or did she fix it and give it to him voluntarily?

A. He generally asked for it; I never saw her fix any for him without his asking for it; I have heard her persuade him not
883 to take any, but he would say he wanted it, and she would fix it for him.

Q. Did you ever see him drink any before you went to live in the same house with him?

Q. Yes, sir; when his children were sick I saw him drinking then.

Q. Was his health about the same during all the time you knew him?

A. Yes, sir; pretty much about one thing until he was taken down the last time.

Q. Did you ever see him intoxicated?

A. I did once.

Q. Only once?

A. Only the one time that I ever saw him that he didn't know everything; he did that time, but seemed kind of helpless, and had to be helped out of his buggy; that was the only time I saw him when he couldn't help himself.

884 Q. Haven't you frequently seen him under the influence of intoxicating liquor to some extent?

A. I have seen him before now when he would flush up and look like it, but I wasn't judge enough to know whether he was or not. He may have been, but I ain't certain of it.

Q. Did you ever notice any hesitation in his speech when he was talking?

A. No, sir; I don't think I did.

Q. Was he inclined to talk a good deal, or to be silent, mostly?

A. To talk. He was the greatest talker I ever met with, I thought, in my life.

Q. And talked largely about his early life?

A. Yes, sir; it seemed to do him a good deal of good to talk about that.

Q. Did you ever hear him express any regret as to the manner in which he was living?

885 A. No, sir; I never did at any time. He never spoke of anything of the sort before me.

Q. Did you ever try to influence Mr. Nailor to do anything?

A. No, sir.

Q. Did you ever see Kate Conley attempt to influence him to do or not to do anything except not to go out in the cold and expose himself, as stated in your examination-in-chief?

A. I don't think I ever did, except asking him not to take any more toddy. Those are the only two things I ever heard her try to influence him about.

Q. And you base your opinion that he was not easily influenced by what you said on those occasions?

A. I certainly do, sir.

Q. Was he intoxicated or at all under the influence of
886 liquor on any of the occasions when you say Kate Conley tried to persuade him not to drink any more or not to go out in the cold and expose himself?

A. If he was I didn't know it.

Q. Could he have been intoxicated more than the one time you speak of during the time you knew him and you not have known it?

A. He might have been, but I never saw him but the one time when he had to be helped out of his buggy during the time I knew him.

Q. Do you know that all the people who came to Kate Conley's house during the time you were there were respectable people, and came there for proper purposes?

A. I don't know that; but if they came for improper purposes they went away without accomplishing their purposes.

887 Q. How do you know that the persons who came there never did anything improper while they were there?

A. Because I attended the door-bell, and let all the people in who came there—pretty much every one—and if there was a gentleman come there I stayed in the room until he left; and I think I have a good reason to know I am on my oath, and am telling nothing but the truth.

Q. Do you mean to be understood as testifying that there never was anybody came to the house that you did not let them in, and that if they were gentlemen or men you on all occasions remained in the room with them and Kate Conley as long as they remained?

A. If I didn't remain in the room all the time, I was in the room adjoining and knew all their business. I slept in the same

888 bed with her, and if I didn't my little girl did.

Q. How did you know all their business?

A. Because I generally heard their conversation, and she would tell me their business, and I think it was correct. There was nothing wrong in that house while I lived in it after Mr. Nailor's death.

Q. Was there anything wrong in it before his death?

A. Of course; that you know yourself. They were not lawfully married; there is a good deal of wrong in that, I should think.

Q. Name some of the men that were accustomed to come to the house.

A. There was none accustomed to come there. Mr. Kelly came there once in a while, but I was generally with him until he

889 left. I had a cousin by the name of Butler came there a good many times to see me. My husband had a cousin by the name of Ballinger to come there to see him a good many times. There was a man by the name of Mr. Archie, whose wife used to wash for Miss Kate and me, but he came there as much to see me as Miss Kate.

Q. Who came to see Kate Conley?

A. Mr. Carrington was there once or twice, and Mr. Thompson was there several times, and several other lawyers came there besides.

Q. Anybody but lawyers call on her?

A. Yes, of course; she had some neighbors, an old gentleman by the name of Flaherty, whose wife had a cow and furnished her milk. I don't pretend to have given the names of all. There were

890 two men who came there and said Mr. Nailor had sent them. I don't know their names.

Q. How do you happen to remember the conversation with Mr. Nailor of Christmas day, 1878?

A. Because he said it to me, and of course I recollect the words he said; we were alone.

Q. How did he say they were trying to kill him?

A. He was speaking of money matters; he said they would not let him have any money; that they were trying to kill him; he called no names.

Q. Did you ever hear him say anything like that before?

A. No, sir; he would often speak of his troubles without saying what they were, but not in that way but that one time; I wouldn't have noticed it so particularly, but that was Christmas day,
891 and the 6th of January he died; his sons came and taken his body, and it brought it into my mind what he had said.

Q. How often did you hear him refer to his troubles?

A. I couldn't tell; a good many times.

Q. Did he seem to be troubled in his mind?

A. At times he would, and then again he would be cheerful; I thought he was troubled at times, but don't know it.

Q. He appeared to be troubled at times, did he not?

A. Yes, sir; he acted as though he was in trouble, and often spoke of his trouble.

Q. How long was he confined to his room or bed during his last illness?

A. Six days; taken January 1st and died the 6th.

Q. Did he go outdoors any during Christmas and New Year?

892 A. Yes, sir; I think he went out on Tuesday, and I think New Year was on Thursday.

Q. Was that the only time?

A. I think it was through the Christmas; it snowed on Tuesday, and I thought he taken cold.

Q. Had he been out much for some days prior to Christmas?

A. No, sir; only on good days, around to the stable and back again; he went out once just before Christmas to his farm.

Q. Was he very sick from the 1st of January on until the time he died?

A. Yes, sir; very bad; he was taken violently ill from the very start.

Q. Was he sensible or insensible most of the time?

A. He was sensible when he was roused up; he was kept in a stupor all the time, but when roused up appeared to know
893 everything and to be perfectly sensible.

Q. But he lay in a stupor except when he was roused up by some one?

A. After the first day pretty much all the time. The first day he complained greatly of pain in his side.

Q. How long before his death did he become wholly insensible?

A. He wasn't insensible at any time. He knew everything as long as he could speak, and he spoke in the morning and died somewhere near the middle of the day. He didn't speak unless spoken to, and he could call Kate, and towards the last that was the only word we could understand him to say. I thought he was perfectly in his senses.

Q. Did Kate Conley send word to any of his family that he was very ill?

894 A. I don't know. He objected to her sending when he was first taken. She asked him over and over again if there was anybody or any minister he wanted sent for. She asked him if he wanted to see Ally; he said "No." She asked him if he wanted to see Washy, and he said, "I don't know." Then she told me to go and tell the colored girl to come up stairs, and he said "No, no, no," and I didn't go.

Q. What did he say "No, no, no" to?

A. To her telling me to go and tell the colored girl to come up there. She was going to send her to the stable for Mr. Nailor.

Q. Was this on the first day he was taken sick?

A. I really don't know, but don't think it was, because she was not so much alarmed about him the first day. She didn't think he was so bad.

895 Q. Did Kate Conley ask him if she should send for his wife?

A. I never heard her.

Q. Did you see any of Mr. Nailor's family present during his last sickness?

A. Yes, sir; both of his sons were there.

Q. How long before he died?

A. I couldn't tell what day it was. His son Wash. came first; Ally didn't come until a little while before he did. Mr. Wash. was there several times. I couldn't tell the day he first came; and his brother was there too.

Q. When was he baptized?

A. The day before he died, I think.

Q. Was that done at his request?

A. Yes, sir; he said he wished to be.

Q. Didn't Kate Conley ask him if she should not have it done?

896 A. Yes, sir.

Q. He did not suggest it?

A. I don't know about that.

Q. Don't you know that he did not?

A. I do not. I never heard Mr. Nailor express himself on religion, about a church, or a member of a church. He was great to argue about Scripture and tell us what was right.

Q. Do you know that he consented that she might have the priest baptize him?

A. I know he answered the priest's questions when he asked him if he should baptize him and what he believed in, and the like of that. I was in the room and heard it. The priest came once and he was in a stupor, and he wouldn't do anything, and came again when he was better.

Q. Do you know that Kate Conley asked him to let her
897 send for the priest to baptize him, or that he consented to it?

A. I do not.

Q. Are you sure that he was baptized the day before he died?

A. I told you awhile ago I was not sure, but I think he was.

Q. Was he baptized before or after his son Washington came to see him first?

A. I am not certain of that, but I think after his son was there?

Q. Do you remember whether Mr. Nailor recognized his son Washington or spoke to him at all when he came to see him?

A. He went up to the bed and called him father, and he looked up and murmured "Washy" twice. I was standing right at the head of his bed when Mr. Nailor came in.

898 Q. After he died did not Kate Conley object to having his body removed to his own residence, and did not she insist that the funeral services should take place at the house where he died?

A. She objected to giving his body up; his sons asked for him, and she objected to giving it up. I never heard funeral services mentioned.

Q. Did you ever see an improvement bond for $300 payable to Mr. Nailor?

A. No, sir; I never saw it.

Q. Did you ever receive any money from any person on account of such a bond?

A. No, sir.

Q. Did not A. E. L. Keese in June last, or about that time, give Kate Conley about $70 in money, and did she not give it to you to keep for her?

899 A. She did not, indeed, sir, and I don't know who the gentleman is.

Q. Have you seen Kate Conley since you testified here on yesterday?

A. Yes, sir.

Q. Did you talk with her about this case?

A. I told her I was here; that I hadn't got through, and had to come back again to-day, and that before I left Mr. Carrington told me I wasn't to talk to anybody about the case; that's just what I told her.

Q. Did you tell her about what you had testified to?

A. I told her that I had testified about the children's deaths, and then I told her what Mr. Carrington had said, and the conversation stopped right there.

Q. Did she seem to think that your testimony would be of advantage to her?

900 A. She didn't say so, but she must have thought so, or she wouldn't have had me brought here, although I told her all the time that it would be none.

Q. You are very friendly with her, are you not?

A. Yes, sir.

Q. And she has been very kind to you?

A. I don't think she was ever very kind to me, except what she got well paid for. I have done as much for her as she ever did for me, I know.

Q. And you think she was very kind to Mr. Nailor?

A. I know she was.

Q. How did she show that kindness?

A. By always trying to do something or other to make him comfortable or nourish him; I call that kindness.

901 Q. She tried in every way she could to please him?

A. Indeed she did.

Q. And you think she deserves to succeed in this case?

A. I never have thought but very little of that. I have often said she ought to have something for her kindness to Mr. Nailor, but, of course, his family are the ones to have his property. She was very kind to him, and I often told her she had no right to be there; that she done it herself, and I thought she deserved something for what she had done.

Q. Your sympathies, then, are rather with her?

A. No, sir; not a particle. I go in for what is right. She treated me always clever, and I have come here to tell the truth, and I am very sorry to be here.

Q. Where did you see Kate Conley since you testified on yesterday?

902 A. At my house; she came there yesterday evening.

Redirect by Mr. CARRINGTON:

Q. Don't you know something of a $300 bond or certificate?

A. I do not. I think I heard talk of the certificate.

Q. Didn't you have possession of such a certificate?

A. I had some three or four papers of hers, but I don't know what they were. I didn't read them, for I can't read writing, and she didn't tell me what they were.

Q. What did you do with them?

A. If it was with the papers I had I returned it to her.

Q. Is that all you did with them?

A. It is, positively.

Recross by Mr. COLE:

Q. Did she give you anything else for safe keeping?

903 A. No, sir; and as for giving me a cent to keep for her she never did.

her
MARY x E. BALLINGER.
mark.

Subscribed and sworn to before me this 17th day of January, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until a day to be fixed by consent of counsel.

Deposition of Ann McCue for Defendant. (*Filed Jan.* 14, 1881.)

FEBRUARY 9, 1880.

Met pursuant to agreement of counsel.

Present: C. C. Cole, Esq., for complainants, and Messrs. Rutherford, Carrington and Thompson, for defendant; whereupon

904 ANN MCCUE, a witness of lawful age, produced, sworn, and examined in behalf of the defendant, deposes as follows:

By Gen'l RUTHERFORD:

Q. Give your name and residence.

A. Ann McCue; 208 14th street S. W. I have resided there seven years.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. Yes, sir; I knew him for seven years, but was acquainted with him for six years before his death.

Q. Did you know Kate Conley?

A. Yes, sir; the same time as I knew Mr. Nailor.

Q. State if you are on visiting terms with Kate Conley, and state generally how intimate you were.

A. I was very intimate with her. I also visited them when the children were sick. During that time I was there as high as eight or nine times a day; they used to send for me. I lived then just across the street.

905 Q. What was Kate Conley's conduct towards Mr. Nailor, how did he treat her, and how did she act towards him?

(Objected to by Mr. Cole, because the witness has not shown that she has any means of knowledge on that subject.)

A. He treated her very well, so far as I know. She treated him very well. She was very kind to him. He had very good conduct. I never saw an angry word with him.

Q. Did you ever see Mr. Nailor during the time you visited them under the influence of intoxicating liquor?

A. No, sir; only once. I saw carried from his buggy into the house.

Q. How did Mr. Nailor act with reference to the children?

A. He was very fond of his children. He was very distressed after their death. I heard him telling Dr. Barker if he

906 wanted three doctors to get them and he would pay them; he didn't care what was done if he could save the life of his Willie.

Q. What was your opinion of Mr. Nailor's capacity and intelligence during the period you have referred to?

(Objected to by Mr. Cole, because the witness has not shown that she has sufficient knowledge of Mr. Nailor to give an opinion.)

A. I think he was a very intelligent man and a very smart man.

Q. Was he a man easily influenced by others or liable to be controlled by those surrounding him?

(Objected to by Mr. Cole for the same reason as above.)

A. No, sir; he couldn't be controlled by anybody, and he would tell you so, too.

Q. Did Kate Conley appear to exercise any great influence over him?

907 (Objected to by Mr. Cole.)

A. She couldn't do it. She would want him not to go to the stables to take the little boy to the stables, and he would say he would take them in defiance of the devil.

Q. Did such instances occur more than once?

A. Three times that I remember when I was there that she begged him not to take him and he would.

Q. Did you ever hear Mr. Nailor express any intention of providing for Kate Conley or the children?

(Objected to by Mr. Cole.)

A. Yes, sir; several times. Six or eight times to the best of my knowledge. I asked him if he didn't know he was laying in a bed of hell in staying with her. He told me he didn't want me or any other damned she-priest to ask her to leave him; he wanted
908 her to stay with him while he lived and he meant to provide for her and the children.

Q. Do I understand, then, that you had tried to get her to *have* him?

(Objected to by Mr. Cole as leading.)

A. Yes, sir. That was twice he said that to me. I asked him twice, but didn't say anything more to him about it. He was a man that didn't like anything said to him about it.

Q. What was Kate Conley's general conduct, and how was she regarded in the neighborhood in which she resided?

(Objected to by Mr. Cole as calling for incompetent testimony, and because the witness has not shown herself competent to testify on the subject.)

909 A. She was regarded very well. Everybody liked her, and had a great sympathy for her in the neighborhood, and the neighbors visited her.

Cross-examined by Mr. COLE:

Q. Where did you reside before you moved where you live now?

A. I lived on the same street, No. 222.

Q. How long did you reside at No. 222?

A. I couldn't exactly say without looking up the receipts. I have been living on the same square for seven years.

Q. Where did you live before you lived on that square?

A. I lived in the First ward, on the corner of I and 25th street.

Q. Where did you first see Kate Conley?

A. On 14th street, going out with herself and Mr. Nailor and her baby.

Q. How long ago was that?
910 A. Seven years.
Q. When did you first speak to Kate Conley?
A. Six years ago.
Q. Where?
A. On 14th street, at her own house.
Q. How did you happen to be there?
A. A little girl was nursing for her, and I made some dresses for the girl, and carried them over to her.
Q. Did you see Mr. Nailor on that occasion?
A. I saw him sitting on the lounge.
Q. After that time did you visit there frequently?
A. Yes, sir.
Q. Did you continue to visit them up to the time of Mr. Nailor's death?
A. Up to the time they moved over on 12th street. I was never there until after he died.
Q. When was that?
911 A. I never kept an account of their moving, and I can't tell.
Q. How long before Mr. Nailor died?
A. I visited them until they moved off 14th street, and I never visited them after that. I saw them every day before that.
Q. About how long had they been living on 12th street before Mr. Nailor died?
A. They moved on 12th street in the fall, and he died in January, I think.
Q. How often did you see Mr. Nailor from the time you first got acquainted with him up until the time he moved to 12th street?
A. I saw him every day; sometimes twice and sometimes five or six times a day; sometimes I would be over there, and sometimes I would see him going by in his buggy.
Q. Did you visit them every day?
912 A. Not every day. I used to go to the gate for milk every morning, and sometimes I would go inside, but I saw him every day going out and coming in.
Q. Did they go out together every day?
A. No, sir; I saw them going out five or six times to the country.
Q. How often did you see Mr. Nailor speak to him?
A. I couldn't tell you how often, it was so many times; when the children were sick I saw him very often.
Q. What did he talk about generally when you talked with him?
A. Sometimes about the children, and wished he might live to see them able to do for themselves, and that he intended
913 to provide for them. After the children died he said he wanted to be buried with the children, and I told him he couldn't be that He talked of how his family used to treat him, and I told him I didn't want to hear of it; that it was only natural for people to have words, and that he had better go home, and he said he never would do that, and he didn't want any one to persuade Katie to leave him.

Q. Did he talk about the children, and about providing for them a good deal?

A. Yes, sir; he was always talking about the children whenever I would go there.

Q. Did that subject seem to run in his mind a good deal?

A. Yes, sir; always; providing for his dear little children, he used to say.

Q. Did you ever hear Kate talk with him upon that subject?

A. No, sir.

914 Q. Was she ever present when he talked about it?

A. Once, and she told him to shut up, and he said he wouldn't, that he had made his will and he didn't give damn who knowed it.

Q. When was this?

A. I never remembered; it was a good while before the children were took sick; I didn't take any interest in it; I was trying to get her away from him.

Q. About how long before they got sick?

A. I don't remember; some time I have had so much trouble and sickness of my own, I can't remember.

Q. Was it a year before the children died?

A. Oh, yes, sir.

Q. Did he say what sort of a will he had made?

915 A. I saw the doctor's carriage and I went over and asked who was sick, and he said, no one; and I said, why, I saw the doctor here; and he said, I have made my will and I have willed a couple of houses to poor Edna and a farm to Willie.

Q. And this, you say, was about a year before the children died?

A. Oh, it was more than a year, must be nearer two years; three years; I don't know exactly the time; I never kept no accounts, it never troubled me; when I found I couldn't separate them it didn't bother me.

Q. Ever hear him say anything about providing for Kate?

A. He used to say he would leave her independent for taking care of him; that she took care of him; I said she took better care of him than I would.

Q. Did he say this when he was talking about providing for the children?

916 A. Yes, sir; he said he would provide for her and the children.

Q. Why did you tell Mr. Nailor that he couldn't be buried with the children?

A. Because he was living with her without being married to her; he couldn't be buried in the Catholic ground.

Q. Is Kate a Catholic?

A. Yes, sir.

Q. Are you?

A. Yes, sir.

(Last two questions objected to by Mr. Thompson.)

Witness here remarks to counsel for defendant, If she was not a

Catholic I wouldn't have bothered with her, as I wanted her to come back to her church.

Mr. Thompson asks the examiner to note that complainants, Mr. Trimble and Mr. Nailor, exclaimed, "We want that down."

917 Q. You and Kate are very friendly, are you not?
A. Yes, sir; friendly as neighbors, nothing else.
Q. You call on her often?
A. Not after they moved off 14th street; I used to visit them often before.
Q. Haven't you visited her since Mr. Nailor died?
A. Yes, sir; once or twice.
Q. When did you see her last?
A. I saw her pass down the street on Friday; I didn't speak to her.
Q. When did you speak to her last?
A. Friday week.
Q. Where?
A. On 14th street going to the pump; I met her and bid her the time of day.
Q. Have a talk with her about giving testimony in this case?
A. No, sir; only she told me to come to Mr. Carrington. I asked her what to do; she said to tell the truth and nothing else,
918 and I said I intended to do it.
Q. Why did she caution you to tell the truth?
A. She said she didn't want me to tell anything else but the truth.
Q. Had she any reason to suppose you would?
A. I don't think she had, for she knew I wouldn't tell a story for her or no one else.
Q. Did you never tell her what you could testify to?
A. No, sir; she never asked me.
Q. When did she tell you she wanted you to come to Mr. Carrington's office?
A. Friday week; and she sent a little girl to me this morning to come up.
Q. Your sympathies are with Kate in this suit, are they not?
A. No, sir; they are neither for her or for me; it didn't concern me neither way.
Q. Wouldn't you prefer to see her succeed than to have her
919 beaten?
A. No, sir; but I thought she had a right to something for her trouble and taking care of him; it is more than I would do.
Q. Did you know Kate was living with Mr. Nailor without being married to him?
A. Most undoubtedly, sir.
Q. Do you think she ought to be paid for that?
A. I do, as long as he took her in.
Q. You say in your testimony-in-chief that Kate behaved properly and had a good reputation; do you think this was proper behavior on her part?
A. I don't think it was proper behavior to live with him without

being married, but he said he took her when she was innocent and intended to provide for her. I told him to go home to his
920 family; he said God damn them, he didn't intend to go home to them; that they hadn't treated him right. I told him that was a family affair and no one's business but their own.

Q. Did you ever hear him say this more than once?

A. Yes, sir; I heard him curse his family several times.

Q. Was Kate present?

A. Sometimes; she would tell him to hush, and he would say he wouldn't.

Q. You say in your testimony-in-chief that you tried to get Kate to leave Mr. Nailor; why did you do that?

A. Because I didn't want her to be living with him. I wanted her to go back to her church, which she had left.

Q. Well, what did Kate say about leaving him?

A. She said she would leave him if he would go home;
921 but he wouldn't go, he said.

Q. Did you ever hear Kate try to persuade him to go home and leave her?

A. Once she asked him if he wouldn't go home, and he said he didn't intend to go home, and intended to provide for her and his children; that that God dam she-priest was trying to get her away from him; that is the way he referred to me.

Q. Did you ever hear Kate say anything to him about going home, except on the occasion above referred to?

A. That's all. She has often told me, though, that she wished he would go home.

Q. You don't mean to say, then, that Kate really wanted him to go home?

A. Well, she said so; I don't know what was in her mind.
922 She told him she really wanted him to go, and she told me so too.

Q. And still you say she treated him kindly; is that true?

A. She did indeed.

Q. Not very kindly, did she?

A. Yes, sir; she did, very kindly, beyond any kindness.

Q. What treatment of him did you ever see that you thought was kind on her part?

A. Why, cooking for him little things for him to eat and nourish him, and fixing him when he was going out, and when he came home take him by the hand and lead him in, take his coat and put it away.

Q. Was he feeble, and did he need leading?

A. Well, indeed he didn't, and wasn't feeble; he could go when he pleased, and did it too. He could go out in the yard and chop wood to my seeing.

923 Q. What else did you ever see her do for him that indicated that she was very kind to him?

A. When he was sick, giving him his medicine and waiting on him.

Q. Was he sick much of the time?

A. Twice; once he had the gravel, and another time chills and fever.

Q. Well, anybody would give a sick man medicine; that don't evince any great kindness on her part, does it? What else did she do that seemed to show she was very kind to him?

A. Why, washing his face, bathing his feet, combing his hair, and fixing him to go out.

Q. Then you mean to say that she did or seemed to do everything in her power to make him like her and become attached to her, do you?

924 A. Well, I don't know what she done it for; I wasn't in her to know, but she did it.

Q. Do you think Kate would have treated him in this way if she had really wanted him to go away and leave her?

A. Yes, I do; because she didn't like to see him knocked about. I don't know what else she done it for.

Q. Don't you think that it was a peculiar way that Kate adopted of inducing him to leave her?

A. I don't know nothing about it; I only tell what I seen.

Q. How old did Kate appear to be then?

A. I can't tell you.

Q. Was she young or old?

A. She is young looking. I don't know how old she is. You can't tell a book by the cover.

Q. Did Mr. Nailor seem to be fond of her?

925 A. Yes, sir.

Q. Seem to think a great deal of her?

A. Yes, sir.

Q. Seem to try to please her?

A. Yes, sir; I never heard a word between them?

Q. What did he call her when he spoke to her?

A. Katie.

Q. What did she call him?

A. Mr. Nailor.

Q. Did you ever see him drink?

A. No, sir; only once I saw him coming home drunk; I saw him carried into the house from his carriage. I was standing in my door, and supposed he was drunk when they carried him in.

Q. Then you say you never saw him drink at all?

A. No, sir.

Q. What particular church was Kate Conley a member of, if any?

926 A. The first church she went to, I brought her to St. Dominic's. I don't know what church she goes to now.

Q. Do you know that she ever joined or belonged to any church?

A. Sure she was christened in the Catholic church, and brought up in it; when she lived with Mr. Nailor she didn't go, until I brought her.

Q. Do you know she was christened in the Catholic church?

A. The lady that knowed her from birth told me so.

Q. Who is the lady?

A. Mrs. Riley.
Q. Where does she live?
A. Some place in the First ward, on 20th street, but I don't know where.
Q. Is Mrs. Riley married?
A. Yes, sir; I believe her husband is dead.
Q. What is her first name?
A. I don't know.
Q. What was her husband's name?
A. I don't know.
Q. That's all you know about her belonging to the Catholic
927 church?
A. That's all.
Q. Do you know a man by the name of Charles McCue?
A. No, sir.
Q. Did you ever know one by that name?
A. No, sir; not that I know of.
Q. Did you know that Kate Conley was in jail for awhile during the latter part of 1865 and the early part of 1866?
A. No, sir; I never heard it.
Q. Are you a married woman?
A. Yes, sir.
Q. Your husband living?
A. Yes, sir.
Q. How long have you been living together?
A. Twenty-four years.
Q. Are you engaged in any business?
A. No, sir; my husband is working in the Commissary.
Q. How long have you lived in this country?
A. Twenty-nine years the 15th of next August.
928 Q. What part of Ireland did you come from?
A. The county of Wicklow.

ANN McCUE.

Subscribed and sworn to before me this 9th day of February, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned to meet at a time to be fixed by agreement of counsel.

TUESDAY, *February 17th*, 1880.

Met pursuant to agreement of counsel.

Present: C. C. Cole, Esq., for complainants, and E. C. Carrington, Jr., for defendant; whereupon, no witness appearing, the taking of testimony is adjourned until Wednesday, Feb'y 18, 1880, at 3 o'clock p. m.

929 *Deposition of Robert Meredith for Defendant.* (*Filed Jan.* 14, 1881.)

WEDNESDAY, *Feb'y.* 18, 1880.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and E. C. Carrington, Jr. for defendant; whereupon ROBERT MEREDITH, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON:

Q. Where do you reside?
A. On 14th street southwest; on the corner of 14th and C streets.
Q. How long have you resided there?
A. In the fourth year now.
Q. What is your business or occupation?
A. I am a house carpenter.
Q. Did you know Allison Nailor, Sr., in his lifetime?
A. Yes, sir.
930 Q. For how long a time?
A. Four years this last September.
Q. Did you ever have any business transactions with Mr. Nailor, and if so, what?
A. I have, sir; I built for him and repaired for him. I put up a couple of houses in the country for him; one is completed and the other is not.
Q. Under whose directions and according to whose plans were the houses built and the repairs made?
A. He mentioned to me how he wished them to be done. The first building he simply drew with his cane on the ground. That wasn't much direction, but being younger than he I could understand it. I taken a piece of board and drew it and carried it to him. He told me to draw it and if it suited him we could agree about
931 the price. As soon as I carried it to him he looked at it and understood it first rate and said that was just what he wanted. After we agreed upon the price I went up there and he came and showed me where he wanted the building. That was the first building. The next year he asked me if I ever built an eight-room house. I told him I had, a many one. He wanted an eight-room house and told me to draw a plan; that he would like to have every room privately. He was afraid I couldn't draw the plans of it. I told him I could. He told me to go ahead and draw the plan and bring it to him. I done so and he understood it and said it was perfectly right. Then he wanted to know what I would build it for,
932 he to furnish everything except the frame; that I was to get. I told him what I would do, and we agreed on the price. He told me to go ahead and do the work according to your plans and complete it up, and your money will be all right. Before I got through that, then he came to me to repair this house on 12th street. I came down and he told me to look at it and see what I would do the work for. He told me how he wanted it done, and everything;

that he wanted another story raised on it. He said, do the work, complete the work, and you will have no trouble about your money. I got through there, and he wanted to know if I was going back to the country to finish the building I was at work on, and left
933 on the 13th of July. I went back up there on the 29th of October, and worked from then until Christmas; then I came down, and that was the last work I done for him.

Q. Did you have any trouble in settling your accounts with him?

A. Never but one, and that was pretty much my own fault, I guess. Never had any trouble except about tearing down an old building on G street.

Q. Did you talk with him at any time about the work you were doing for him?

A. Yes, sir; I did, and he used to often talk with me.

Q. About the buildings and the work you were doing for him?

A. Yes, sir.

Q. What would he say?

A. When I was tearing down this building on G street he
934 said he was going to send the lumber up in the country to put up the corn-crib and grainary, all under one roof. He said he was doing this to provide for Willie; that the house I was putting up there was for Willie. He would often ask me how I was getting along with the buildings, and when would I want shingles or nails or anything like that. After I got it completed he told me to come and get my money.

Q. How often did you see him in the country during the time you were building there?

A. About the corn-crib; I couldn't tell you particularly, but the first week I was there he came twice. He would sometimes come once a week, and sometimes not for weeks. I couldn't tell the exact number of times, but I know he came pretty often.

935 Who came with him?

A. Miss Catherine Conley came with him, and the children and the cook; these all came up to the death of the children.

Q. Would he talk with you then?

A. Yes, sir; the first week I was there I got into a little dispute about where I was cutting the timber. I was a stranger up there and started to come home; I met him just the other side of Tennallytown, and he told me to go back; this was on a Thursday.

Q. What were you leaving for?

A. Because I didn't know the lines of where I was cutting the timber, and a man came there and said I was liable to be arrested. Mr. Nailor had been there before, on a Tuesday, and showed me where to cut and how far to go. Mr. Nailor went back with me; he
936 asked me who the men were. I told him I didn't know, and he showed me again where to cut; he asked what I was getting out and I told him the sills and the size. He wanted to know what I run away for; that if they did arrest me he would come and take me out; I told him I had rather not go to Rockville in that way; he told me I was a coward.

Q. You said that he looked at the building while you were working; did you have any conversation with him during such time?

A. I did.

Q. Tell us what those conversations referred to—what they were about?

A. About getting of the blocks and things, when I wanted them, and that Mr. Beans must do the hauling, and he carried me
937 and showed me where to get them; that locust and cherry blocks would do. The house rested on the blocks, and the other house on stone piers.

Q. That was during the time you were commencing work, but I refer to conversations while the work was going on and up to the time it was completed; what would he talk about?

A. When he would come up there he wouldn't stay long with me, but he would ask how things were getting on, saying what a fine building it would be, and how nicely the timber was hewed.

Q. Who showed you what kiud of timber to use, and where to cut it?

A. He showed me himself.

Q. What kind did he select?

A. White oak for sills, poplar for plates and rafters and
938 joists, and locust and cherry for the piers.

Q. What kind of lumber is that for such a building?

A. The white oak is supposed to be the best, and poplar is the next best; locust is the best for piers.

Q. When did you first commence work for Mr. Nailor on the farm?

A. Two years ago the 28th of this last July.

Q. Is the dwelling-house finished?

A. No, sir; only the frame sawed together and ris; there are no rafters or weather-boarding.

Q. Have you done any work on the dwelling-house in the country since his death?

A. No, sir.

Q. How often would you see Mr. Nailor in the city?

A. If I was working anywhere close by him I would see him pretty much every day. I used to go up to the stable for the horse and buggy for him pretty often.

939 & 940 Q. Did you have many conversations with him?

A. Yes, sir: I had right smart talk with him.

Q. What about?

A. Different things; he used to talk a great deal; he used to talk a great deal about his children.

Q. What would he say about them?

A. He would say how he used to do when he was young like Willie, and how Mr. Wash. used to do when he was little, and how he, Mr. Nailor, could work and how he did work, and he would call Willie to him and say, I will make a smart man of you if I can live, but I know I won't live, and other talk, one thing to another, that I wouldn't take much account of. I mean by Mr. Nailor's children, his and Kate Conley's children.

Q. Would he talk about the children?

941 A. Yes, sir; he often talked to me about them.

Q. What would he say about them?

A. When the children was living he would often tell me what providence he wanted to make for them; after the death of the children of course he used to talk about them.

Q. What would he say about them then?

A. Well, he would talk about little Willie, if he had lived what he intended on doing, in that way.

Q. What provision did he tell you he intended to make for Willie?

A. That house was for Willie, so he told me.

Q. Did you talk with him on other subjects?

A. Yes, sir; he was great for running on any way. I used to sit down there in the dining-room and talk with him. I hadn't much use, as black as I am, to be setting up there talking with gentlemen.

942 Q. I want to know what he talked about, if you can recollect.

A. He used to talk about when he used to be farming up the country, and how much he lost when this war broke out, and how the soldiers destroyed his property. He talked on first one thing and then another.

Q. What was the condition of his mind during the period you knew him?

A. Very good to me, sir. Not much of a judge.

Q. Was he a smart man to deal with in building operations?

A. All the dealings I ever had to do with him he was smart enough.

Q. How often did you see him drunk?

A. I couldn't say, to be really drunk, how often; I have seen him tight, but to say how often, I wouldn't pretend to say.

943 Q. A dozen times?

A. Indeed I couldn't say; to say he was really drunk, that would be taking more on my shoulders than I would like. I used to stay there with him, and he would go away sober and come home drunk.

Q. How often did he come home drunk, that you saw him?

A. I never saw him come home really beastly drunk but once.

Q. Do you know Mr. Washington Nailor?

A. Yes, sir.

Q. Have you had any conversation with him in reference to this case?

A. I was talking with him twice—three times, I believe.

Q. When and where did the first conversation occur?

A. On 14th and the Avenue.

Q. What did he say?

944 A. He was asking me if I wasn't with the old man at his death. I think that was the first. He was asking my opinion about what did I think of the old man and about this Miss Catherine Conley; did I think she kept him under the influence of liquor. I told him rightly that I didn't know; that I stayed

there. The next time I saw him he was asking me the same. This was on 14th and C streets. He asked me did I think he was capable of transacting business. I told him I had done right smart of work for him; according to my judgment, he was. There were several things he asked me, and I couldn't bring them to recollection. He asked me if I thought he was the father of the children. I told him I didn't know, but they certainly must be, for they were just like him. The third conversation was on 14th and C streets. It was all pretty much the same.

945 Q. Didn't he say something to you about your testifying in his behalf; about his winning this case?

A. If he won this case, of course I should have the finishing of the house up there; he said he had looked at it; this was the second time he was down there.

Q. Did he come to your house?

A. No, sir; he saw me and called me out of my shop to his buggy.

Cross-examined by Capt. COLE:

Q. How many times did you talk with Wash. Nailor about this case?

A. Three times.

Q. Where did the first conversation take place?

A. On 14th and the Avenue; on the corner.

Q. Who was present on that occasion?

A. I didn't know who was present; I didn't know none

946 of the gentlemen.

Q. Were any but you and Mr. Nailor present?

A. There was one gentleman, I think.

Q. Was he white or black?

A. A white gentleman.

Q. Where did you and Mr. Nailor next meet and have a conversation about this case?

A. 14th and C street-.

Q. At your shop?

A. Yes, sir; right in front of it.

Q. Who else was present then?

A. There was another gentleman, his brother-in-law, I think.

Q. Where did you next have a conversation with Mr. Nailor about this case?

A. 14th and C street-.

Q. Same place?

A. Yes, sir.

Q. Who else was present on that occasion?

A. The same gentleman was with him.

947 Q. On which occasion did Nailor tell you that if he won the case you should have the finishing of the house?

A. It was on the second.

Q. Are you certain that he told you that?

A. He said them words in talking.

Q. And did he also tell you that he had been out and had seen the house at the farm?

A. He told me [he] had seen it.

Q. On which occasion did he ask you if you thought the children belonged to the old gentleman?

A. That was on the second occasion.

Q. Did you not tell him that you thought the old man was too old to get children; that you were only fifty, and that you couldn't?

A. I told him I was in my fifty-fourth; I don't know how it would be with him; that I couldn't get any, although the children were precisely like him.

948 Q. What did you tell Mr. Nailor your name was?

A. I told him my name was Robert Ulineberry.

Q. Is that your name?

A. No, sir; that is my liberty name. I belonged to Benedict Ulineberry, and before I could get my freedom I had to take his name. But my father's and mother's name was Meredith. I got my liberty under the name of Ulineberry eight years before the war.

Q. Why did you tell Nailor that your name was Ulineberry and then give your name as Meredith here?

A. Because I was out on the street and I knew the street was no place to examine a man, but here I am sworn to tell the truth. I was telling the truth anyway.

949 Q. By what name are you generally known and called by your friends, those who know you best?

A. Meredith is my name, the most I am called by.

Q. When did you commence to build the first house for Mr. Nailor?

A. Two years, the 28th of last July.

Q. Where was that?

A. Up on the farm.

Q. In Maryland?

A. Yes, sir.

Q. Was that the first work you ever did for him?

A. No, sir.

Q. What did you do for him before that time?

A. The first work I ever did for him was a windy day, and it started to lift the tin off the roof. He sent for me to come round there, and I secured it. That was the first job of work I ever did for him.

Q. When was that?

A. Four years this last November.

950 Q. Did you work for him any between that and the time you first commenced to build this house?

A. Yes, sir.

Q. What did you do?

A. I wainscotted his kitchen.

Q. I what house was that?

A. On 14th street.

Q. Did you do anything else on that house?

A. I put on three pair of blinds that got blowed off in that gale.
Q. Anything else?
A. Nothing more than whitewashing and painting the roof.
Q. Who employed you and paid you for what you did on that house?
A. Mr. Nailor.
Q. Who was living in it at the time?
A. He and Miss Catharine Conley.
Q. Did you do anything else for Mr. Nailor before you commenced to build the first house?
951 A. Yes, sir; I repaired the stable down there on 14th street belonging to that building.
Q. Was that all?
A. I went up here and tore down the old building on G street, between 18th and 19th. That was all I did for him, except errands, up to the time I commenced to build the first house.
Q. You commenced to build the first house for him on the 28th of July, 1877, out on the farm; what sort of a house was it?
A. A double corn-crib and grainary.
Q. How long were you building that?
A. Finished it on the 20th of the next October.
Q. Do anything else in the meantime?
A. No, sir.
Q. How much was he to pay you for that?
A. Boarded me and paid me $50.
Q. Did you stay out in the country all the time you were doing it?
952 A. From Monday morning until Saturday evening.
Q. Where did you board while you were in the country?
A. At Mr. Floy Bean's.
Q. Did Mr. Nailor pay your board?
A. Yes, sir. Mr. Bean charged $10 a month board for me, and Mr. Nailor was to pay it, and Mr. Nailor paid me $50 over and above the board.
Q. Is this the house the plan of which Mr. Nailor marked out on the ground with his cane?
A. That's the one.
Q. This was not a dwelling-house, but just a house to put grain in?
A. Yes, sir.
Q. Is this — house he said he was building for Willie's benefit?
A. No, sir. The dwelling-house was the one he said he was building for Willie's benefit, the eight-room house.
Q. When did you commence to build that?
A. On the 8th of May, 1878.
953 Q. What did you do from the time you completed the first house until you commenced the second?
A. Sometimes working at the shop and the balance for Mr. Beveridge. I put floors in houses down on 14th street.
Q. You didn't do anything for Mr. Nailor between those times?

A. Not of carpenter's work; no more than doing errands, sawing and spitting wood, when he wouldn't do it himself.

Q. Did you do errands and saw and split wood for him frequently during that winter?

A. Yes, sir; pretty much along. I stayed there from the 3rd of January to the 14th of February, 1878.

Q. How much was Mr. Nailor to pay you for building the second house?

A. He was to give me $100. I first asked him $200. He said no; he would give me $100 and board me.

Q. And was he to furnish the material?

954 A. I had to get the frame out of the woods, the same as I did for the corn-crib, and he was to furnish all the material.

Q. Out of whose woods did you get the frames?

A. It was his'n, out of the thirty-acre lot.

Q. He showed you where to get it?

A. Yes, sir.

Q. He showed you where the lines were?

A. He did; drove through the woods.

Q. And while you were cutting the timber other parties came and said you were not on his land, and threatened to arrest you, and you left?

A. It was the frame of the corn-crib I was getting out when this happened. He also showed me where to get the frame of this first house.

Q. Was the timber which you cut for the frame of the second house standing and green when you cut it?

955 A. Yes, sir; cut it and hewed it.

Q. Did you immediately frame it and put it up?

A. No, sir; I sawed the frame out and then came down here and did this work on 12th street.

Q. How long were you doing that?

A. I commenced it on the 17th of July, and the children were taken sick, and he stopped me for to go errands for him, and I began again in September and worked until the 29th of October. That finished the job on the 12th-street house, and then I went back to the country and commenced getting the frame ready to raise. I raised it in November. I was getting out columns for the porch, and worked until Christmas, when I came home and the old gentleman died, and I never went back to work on it any more.

956 Q. Was it after you went back to the country during the fall that the old gentleman talked with you about the children?

A. After I went back, and before, too; but the children were dead then.

Q. Who employed and paid you for what you did on the 12th-street house?

A. He employed me, but she paid me.

Q. Who is she?

A. Catherine Conley.

Q. How did she pay you?

A. In instalments.
Q. Instalments of what?
A. For what I agreed to do the work for.
Q. What did you agree to do the work for?
A. The wood work for $35.
Q. Well, did you do anything else?
A. I built a shed; that was extra.
Q. How much were you to have for all you done?
A. The contract was $35; the other was little piece work;
957 there was no contract about that.
Q. How much were you paid in all?
A. I can't tell, because I had another man working on the shed, and we divided on the little extra work.
Q. How often did Mr. Nailor go out in the country while you were out there?
A. I can't say precisely how many times, but pretty often.
Q. Once or twice a week?
A. The first week I was at work he came out twice.
Q. Were Kate Conley and the children always with him?
A. Yes, sir.
Q. And the cook?
A. Yes, sir.
Q. Why did they bring the cook along?
A. On account of the children, taking care of them.
Q. Did Kate come with him alone after the children died?
958 A. Yes, sir. They didn't come up but once or twice after the children died.
Q. Bring anything along with them to drink?
A. Sometimes he brought it in the side pocket, in a little flask. He has offered me some.
Q. Ever see him drink out there?
A. No, sir; I did not. I would be either in the woods or at the frame, and he would be in the house.
Q. Ever see him drink at his house?
A. Yes, sir; milk toddies.
Q. Often?
A. No, I can't say often. The most I saw him drink was milk and whiskey, or brandy and whiskey.
Q. Ever see Kate Conley fix the punch for him to drink?
A. Yes, sir.
Q. Often?
A. I couldn't say; at different times; never twice at the
959 same time; but as I was there often, it would be often, altogether.
Q. Was the cook that went out in the country with them white or colored?
A. Colored.
Q. What was her name?
A. Lizzie Nelson.
Q. Where does she live now?
A. She don't live anywhere, because she is dead.

Q. Have you worked any for Kate Conley since Mr. Nailor died?
A. No, sir; more than I whitewashed on 12th street. After the death of Mr Nailor I stayed there until the 17th of March.
Q. When did you see her last?
A. Saw her to-day.
Q. Talk with her about this case?
A. No, sir. She told me to come up here.
Q. What did she say she wanted you to come for?
A. She didn't say, but for me to come to Mr. Carrington's office; that he wanted to talk with me.
960 Q. And so you talked with Mr. Carrington about it?
A. Yes, sir.
Q. Didn't you know that you were to be a witness in this case until to-day?
A. No, sir; I can't say that I did know it.
Q. Where did you see Kate Conley to-day?
A. On 14th and C streets.
Q. At her house?
A. In front of her house you may say, just below the Government building; not the house she lives in now.
Q. How did you happen to see her there?
A. I was working there at the shop and she came down.
Q. Does she claim to own the shop?
A. No, sir; it belongs to Mr. Fitzgerald.
Q. When did you work for Mr. Nailor on the farm?
A. I went up there two years the 28th of this July gone.
961 Q. Did you work on the farm?
A. No, sir; that's the time I went up there to put up the corn crib.
Q. Then you don't mean to say you ever worked on the farm for him?
A. No, sir.
Q. Did Mr. Nailor seem to like to have you come into the house and talk with him?
A. Yes, sir; he often sent for me?
Q. He would sit and talk as long as you, would he not?
A. Yes, sir.
Q. Talked a good deal about Kate Conley and her children?
A. More about the children, not so much about her; but he was great to talk about the children.
Q. Kate was rather cross to him, wasn't she?
A. No, sir; didn't seem to be so, sir.
Q. Didn't she scold him?
A. Not to my knowing. When he would — anyways cross she would seem to be afraid of him.
962 Q. Was she kind to him?
A. Yes, sir.
Q. What did you ever see her do for him that indicated she was kind to him?
A. She acted the same as any other man's wife would, I suppose. If he was going out, and it was a bad-looking day, she would say

she wouldn't go, and if he would she would see that he put on his overcoat.

Q. The old gentleman was not very well, and didn't do much during the time you knew him?

A. No, sir.

Q. Do you remember of seeing him executing a paper, a will, at any time?

A. I was there with one.

Q. When was that?

A. That was in March, 1878.

Q. Who else was present?

A. Mr. Mark Douglas, James Allman, Dr. Hammett.

Q. Was it a will?

963 A. 'Deed I don't know.

Q. What did they say it was?

A. They told me it was a deed.

Q. Who said it was a deed?

A. He told me it was a deed, I think.

Q. A deed to whom?

A. Of property to Willie; so much, he said, *he said*, was for Willie, and as for Edna I don't remember.

Q. Do you remember the day in March that this was?

A. I don't.

Q. Was Kate Conley there?

A. She was.

Q. Who went for Douglas and Allman?

A. I went for them.

Q. Who sent you for them?

A. He sent me.

Q. Was the old man well at that time?

A. No, sir; he wasn't well; he had been out, though.

Q. Was he in bed?

A. No, sir; setting up.

964 Q. Did you not tell Wash. Nailor and Matthew Trimble that the old gentleman was sick in bed and had to be raised up to sign the will, and that Kate Conley sent you for Douglas and Allman, and did you not tell them this on one of the occasions you saw them at your shop and talked with them about this case?

A. I might have done —, but I wasn't sworn. I was a colored man and didn't want to be hampered by people examining me on the street, but I am here now to tell the truth as near as I can.

Q. Did you not also tell them on the same occasion that you did not consider the old gentleman competent to transact business during the time you knew him, and that you would not have bought property from him under any consideration?

965 A. I told them this, I wouldn't like to do it, and there is where they wanted to hamper me. He asked me if I had ever transacted any business for his father, and I told him about tearing this old shop down. I told them that the old man was incompetent to transact business, and that I wouldn't have bought property from him.

Re-examined by Mr. CARRINGTON:

Q. What reason have you, if any, for telling these gentlemen at that time what you did?

A. I didn't want the hard feelings of no person. I didn't want to be called as a witness by either side.

Q. Didn't you receive word that you were to be plced upon the witness stand yesterday?

A. Yes, sir.

Q. Why didn't you come?

A. Because I had to go across the river to see Mr. John Alman.

966 Recross:

Q. At the time you told these gentlemen that you thought Mr. Nailor was not competent, did you believe that was true?

A. No, sir; I didn't believe it to be true, not in every instance.

Q. When you told them that the old gentleman was sick in bed when he signed the will, was that true or false?

A. That wasn't true.

Re-examined by Mr. CARRINGTON:

Q. What was the truth? Was it what you have stated in your examination under oath?

A. What I have stated is the truth, and that is, that the old man had been sick, but had gotten well enough to go out.

his
ROBERT x MEREDITH.
mark.

Subscribed and sworn to before me this 18th day of February, A. D. 1880.

IRVING WILLIAMSON,
Examiner.

Adjourned until Feb'y 19 at 3 p. m.

967 *Deposition of Ann Clark for Defendant.* (*Filed Jan.* 14, 1881.)

THURSDAY, *Feb'y* 19, 1880.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and E. C. Carrington, Jr., for defendant; whereupon ANN CLARK, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON:

Q. Where do you live?

A. On the corner of I and 7th streets southwest.

Q. How long have you lived in Washington city?

A. I came to Washington, from Pennsylvania to Washington, about the time of Buchanan's election, and have lived here off and on ever since.

Q. Did you know Allison Nailor, Sr., in his lifetime, and, if so, how long?

968 A. Yes, sir; I knew him for about eight years, as near as I can come to it.

Q. Did you live anywhere near him?

A. I lived on the corner of I and 7th streets while I knew him.

Q. Did you visit the house where he resided, and, if so, how frequently?

A. Yes, sir; not very often. I had a sister who rented rooms in the house Mr. Nailor lived in, and I used to visit her; that is the way I became acquainted with him. I knew Catharine Conley for about the same time, and became acquainted with her in the same way.

Q. Did you converse with Mr. Nailor, and, if so, how often and upon what subjects?

A. I conversed very little, and the subjects were, if he had a newspaper he would tell me something he had been reading, and would ask me something about my brother-in-law, who was living

969 in the house. I spent very little time in the house. After my sister died I seldom went there.

Q. Are there any of these conversations that made a decided impression upon your mind, and that you are now able to state?

A. Nothing that I ever said wrong between those people, except that they lived together as man and wife.

Q. Did you see the children?

A. Yes, sir.

Q. How often?

A. I can't mention the times—every time I went there

Q. Did you ever talk to Mr. Nailor about them?

A. Yes, sir.

Q. What would he say about them, and how did he act towards them?

A. He acted very kindly towards his children, and especially little Willie; he seemed to be fond of all the children, but

970 from all I could see he was doubly fond of Willie, as I judged from his actions. If he would go outside the house he would call Katie, and say that child will be hurt; he seemed to be afraid something would happen to them; he would put his own gold watch on the boy and set at the window and watch him out on the street with it on.

Q. What would he say about them?

A. I couldn't exactly say what he said now, but he would talk about them just as I would about mine.

Q. Did he ever say anything to you about his property?

A. Not that I remember.

Q. Were you at his house during the sickness of any of these children?

A. No, sir.

Q. Were you at the house when Mr. Nailor brought there or executed papers relating to his property or a portion of it?

971 A. Yes, sir; I was there one day, and he came in, and Katie, as he called her, pulled his overcoat off and laid it on the baby's carriage, and he said: There's papers in the pocket of that overcoat; you take them out and take care of it. They are all right now, he says to her, but they are to be put on record; and he took some money out of his pocket and said: Here is your change, and gave it to Willie. So she took the papers out and looked at them, and seemed to be very well pleased, but no one read the papers in my presence; only the words he said is all that I can state; I think one part of the papers was to go to Rockville to go on record and another part in the City Hall.

Q What men did you see there during your visits?

972 A. I never saw a man there except a colored man, who, I supposed, was his servant, until he was on his death-bed.

Q. Do you know people acquainted with Catharine Conley and live in the neighborhood in which she resided during the time of your acquaintance with her?

A. I don't know any except one.

Q. Of what religious belief are you?

A. I am a Roman Catholic.

Q. What is your age?

A. I think I am pretty near sixty.

Cross-examined by Mr. COLE:

Q. Where did Mr. Nailor reside when you first became acquainted with him?

A. I couldn't tell you the name of the street, but they moved from that house to 14th street.

Q. Did your sister live in the house with Mr. Nailor at that time?

A. Yes, sir.

Q. Did she remove with him when he removed to 14th street?

A. Yes, sir; her and her husband.

973 Q. What was her name?

A. Mrs. Mary McGuigan.

Q. What was her husband's name?

A. Daniel McGuigan.

Q. When did they first go to live in the same house with Mr. Nailor?

A. I couldn't tell that exactly; it was about eight years ago.

Q. Did they continue to reside in the same house with Mr. Nailor until your sister died?

A. No, sir; she was in my house six months and six days until she died?

Q. When did she die?

A. She died about five years ago.

Q. How often did you go to Mr. Nailor's while your sister was there?

A. I didn't go very often.

Q. As often as once a month?

A. No, sir.

Q. Did you go to see her as often as once in three months while she lived at Mr. Nailor's?

A. I couldn't state; I only went very seldom.

Q. Why did you not go oftener?

974 A. She at one time consented to leave Mr. Nailor and go with my sister to New Jersey. She had only one child living then, Willie. My reasons for going was because I thought I could influence her to leave, because I never liked her living in that way. She would take me into the room with Mr. Nailor, and I never had a chance to say much to her about it.

Q. Was the reason why you did not visit your sister oftener while she was living at Mr. Nailor's because you did not like to go to the house where Mr. Nailor and Kate Conley were living together unmarried?

A. That was my reason; I didn't like her to live in the house with them. They paid rent for the rooms they had.

Q. Did you ever see Mr. Nailor or Kate Conley before your sister went to live in the house with them?

975 A. No, sir; never.

Q. Did you ever see either of them after your sister left there?

A. Certainly, I did.

Q. Where?

A. I saw them both in my house; they came to see my sister on her death bed.

Q. Did you ever see either of them any other place after that time?

A. Yes.

Q. Where?

A. In their own house on 14th street; I went there to see her and saw them both.

Q. How often did you visit Mr. Nailor and Kate Conley at the house where they lived after your sister left there?

A. I couldn't tell how often, but sometimes.

Q. Quite often or very seldom?

A. Seldom.

Q. Was Mr. Nailor generally there when you went there?

A. Mostly there when I went there.

Q. Why did you go there after your sister left?

976 A. I had the impression on my mind that I could influence her to leave him, but I could never get a chance to talk with her.

Q. Were you generally there in the daytime or evening?

A. Daytime; I never was there in the evening.

Q. Were you ever there without seeing Mr. Nailor in the house and in the same room with Kate Conley?

A. That day he came in with the papers; he wasn't there when I got there, but came in; that is the only time I remember being there without his being there.

Q. When was that?

A. I can't state that; I think it is in or about two years ago since I seen those papers.

Q. What time of the year was it?

A. I can't state the time.

Q. Did you say anything to Kate Conley about leaving Mr.
977 Nailor on that occasion before he came in?

A. No; I hadn't spoke to her about it for some time; I wasn't there long before he came in.

Q. I suppose you had given up all hope of getting her to leave?

A. Oh, yes; I had given up all hope.

Q. Did she seem to like him?

A. I never saw nothing between them, except what you would see between any other man and wife; they seemed to be happy together as far as I could see.

Q. How did Kate Conley treat Mr. Nailor?

A. I think she treated him well; she seemed to be very attentive; got everything he wanted.

Q. From what you saw would you say she was unusually kind to him?

A. I couldn't say, sir; I saw her as good and kind as I ever
978 saw a woman to her husband; on his death bed she was attentive as she could be.

Q. Did she use to scold him sometimes?

A. I never heard her.

Q. When he came in on the occasion you say he had the papers, what did she say to him when he came in?

A. I couldn't state that word. I don't know what she said to him. I know what he said to her when she put the overcoat on the baby carriage.

Q. What was the first thing he said about the papers?

A. He mentioned the coat. Take the papers out of that coat pocket. She took them out and laid them on the table, and he said, They are all right now except putting them on record, some in Rockville, and some in the City Hall.

Q. Then what did she say?

A. I couldn't state the words; she may have said something, but I don't recollect what.

Q. Did she look at the papers?

979 A. She opened them and looked at them, but didn't read anything that I could hear.

Q. How long did she look at them?

A. That I couldn't state.

Q. Did she seem to read them all over or just glance at them?

A. It appeared to me that she didn't have time to read them all over.

Q. How many papers were there?

A. I couldn't state; it appeared to me four or five. I didn't count.

Q. What did Kate Conley say about having them recorded?

A. She didn't say anything, not that I remember. She seemed to be well pleased.

Q. How is it that you can remember and state what Mr. Nailor said about the papers, but cannot remember or state what she said at the same time?

A. I cannot remember the words she said, but that she was
980 well pleased and looked at the papers, but read nothing out that I could hear.

Q. What did the boy do with the money that was handed him?

A. I didn't see what he done with it.

Q. How much was it?

A. That I don't know.

Q. What kind?

A. There was some bills and some silver.

Q. Did he say what the change was for?

A. No.

Q. During the time you knew Mr. Nailor, in what state of health did he appear to be generally?

A. Sometimes he complained very much, and at other times he would be a little brightened up.

Q. Did he appear to be in bad health generally?

A. Well, mostly in my time of knowing him.

981 Q. Did he generally appear to be despondent and melancholy or bright and cheerful?

A. Sometimes bright and cheerful and would talk. I don't know if I ever saw him melancholy until I seen him on his death-bed.

Q. Were you at the house during his last sickness?

A. I was back and forwards; didn't stay there constant.

Q. Back and forth every day?

A. No; it was only a few days from the time I went there until he died. I was four or five times there.

Q. How many days did he live after you first went there in his last sickness?

A. Either three or four.

Q. Was he speechless and insensible when you first went there?

A. No, sir.

Q. Did you know of his being baptized during his last illness?

A. Yes sir.

982 Q. At whose suggestion was that done?

A. I couldn't state.

Q. Were you present when it was done?

A. Yes, sir.

Q. Was he sensible at that time?

A. Yes, sir; he was.

Q. How often have you called on Kate Conley since Mr. Nailor died?

A. I couldn't state that; four or five times I expect.

Q. Not more than that?

A. No; to the best of my opinion.

Q. How often has she called on you?

A. She has been in my house, to the best of my opinion, three times.

Q. When did you last see her?

A. She brought me here to Mr. Carrington's Monday or Tuesday.

Q. Haven't you seen her since?

A. No, sir.

Q. Are not you and she very friendly?

A. Certainly we are friendly at present.

983 Q. Don't you feel interested that she should succeed in this suit?

A. Yes, sir; there is nothing interesting to me except to do justice to my own soul and tell the truth.

Q. Are you married?

A. Yes, sir.

Q. Is your husband living?

A. Yes, sir.

Q. Do you live together?

A. Not at present; we have never been separated, but my husband has to go away to work sometimes; he is now in Cumberland.

Q. What business is he engaged in?

A. He is a stone-mason.

Q. Where were you born?

A. In Ireland.

Q. What part?

A. The north, county Anterim.

Q. How long ago did you come to this country?

A. I came to this country in 1844.

984 her
ANN x CLARK.
mark.

Subscribed and sworn to before me this 19th day of February, A. D. 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until a day to be fixed by consent.

Deposition of Mary S. Wilson for Defendant. (*Filed Jan.* 14, 1881.)

TUESDAY, *March* 2, 1880.

Met pursuant to agreement of counsel to take testimony in behalf of defendant.

Present: E. C. Carrington, Jr., and Charles Thompson, Jr., for defendant, and C. C. Cole, Esq., for complainants; whereupon MARY S. WILSON, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes as follows:

985

By Mr. CARRINGTON:

Q. Where do you live?

A. On P street, near 14th street, opposite Riggs market. I have lived there, this June coming, three years.

Q. Where did you live before that?
A. On E street, near 17th street.
Q. How long did yot live there?
A. I suppose I lived there thirty years; I owned the house.
Q. When did you first become acquainted with Allison Nailor, Sr., and Catharine Conley?
A. In the year 1871.
Q. Where were they living at that time?
A. In a house next to where I lived, on E street.
Q. How long after you became acquainted with them before they moved to 14th street?
A. I got acquainted with them in the month of June, 1871. They kept a small grocery store. I could not say how long it was
986 before they moved on 14th street.
Q. Did they move from E street?
A. Yes, sir.
Q. To what place did they move?
A. On 14th street.
Q. Did you visit them on 14th street; and, if so, how frequently?
A. Yes, sir. I couldn't say how frequently; sometimes twice a week and sometimes it would be three weeks. I went to nurse the child.
Q. What child was it?
A. Willie.
Q. How long did you stay at the house then?
A. I was there three weeks, going home at night.
Q. Did you converse with Mr. Nailor; and, if so, how often?
A. Frequently.
Q. On what subjects?
A. Upon different subjects; sometimes on the improvements of the city; sometimes about the old inhabitants, and very often
987 he would speak about the provision he intended to make for the children.
Q. What would he say about the children and the provision for them?
A. He used to call his little boy Willie, and say "papa was going to give him property, and he wished papa had money to give him," and all such talk as that. He spoke, too, of a deed or will conveying the piece of property on 14th street to Willie. He told me several times he had given that to Willie.
Q. In what manner did he treat the children?
A. With all kindness. He appeared to be devotedly attached to them.
Q. How did he address them?
A. He would address them as sonny, come to papa. He would have them there combing his head and playing with them, as fathers will do.
Q. What was the character of his treatment of Kate Conley?
988 A. I wish every husband would treat his wife as kind as he treated her.
Q. What were his habits as to the use of intoxicating liquors?

A. When I have been in the house I have never seen him under the influence of liquor. I have seen him go away from the house perfectly sober and come back apparently in liquor; this was at times. I don't mean every time, of course. I have seen him take a little liquor in the house, but not enough to make him drunk.

Q. What was the condition of his mind during the period you knew him?

A. I think he had a perfectly sound mind. He was certainly very intelligent; his conversation showed that.

Q. Do you remember when the children died?

A. I couldn't tell you the dates, except the first one.

989 Q. When did the first one die?

A. It was born in July and died two or three months after, in the year 1871.

Q. Were you in the house at the time of its death?

A. Not when it died. I was there when it was in the coffin.

Q. Do you remember any conversation occurring at that time? And, if so, state it.

A. Yes, sir. Miss Conley called Mr. Nailor to the side of the coffin and said: "Mr. Nailor, I have lost my little one; go back to your wife." His answer was: "I may as well go to hell as to go back to her."

Q. Did you ever hear him talk of his treatment at home by hsi wife and children?

A. I have heard him say, speaking to little Willie, that he loved his little ones so well, for the older ones were trying to cheat him out of all he owned.

990 Q. Are you acquainted with people who know Kate Conley and who reside in the neighborhoods where she has resi ied?

A. Yes, sir.

Q. Have you talked with them about her?

A. No, sir.

Q. Have you heard them express any opinion of her with regard to her chastity?

A. I have heard passing remarks about her. I have never heard them speak of her in any other way than of her connection with Mr. Nailor.

(Adjourned until Wednesday next at 3 p. m.)

WEDNESDAY, *March* 3, 1880.

Met pursuant to adjournment.

Present: E. C. Carrington, Jr., and Gen'l Rutherford for defendant and C. C. Cole, Esq., for complainants; whereupon the

991 cross-examination of the witness, MARY S. WILSON, is commenced:

By Mr. COLE:

Q. How did you become acquainted with Kate Conley?

A. By her living next door to me and keeping a small store and my going there to buy things.

Q. How long did you live next door to her?
A. I couldn't say.
Q. Some time?
A. Right smart while.
Q. How many years?
A. I couldn't tell.
Q. As long as two years?
A. I wouldn't say for certain.
Q. When did you get acquainted with her?
A. In the year 1871.
Q. What time in the year?
A. I think in the early part of July.
Q. Where was it?
A. On E street, near 17th street.

Q. Was she and Mr. Nailor living together at that time?
992 A. Yes, sir.
Q. Had she any children when you first knew her?
A. No, sir.
Q. Who moved from E street, near 17th, first, you or Kate Conley?
A. She did.
Q. Where did she move to?
A. On 14th street, South Washington.
Q. Had she any children when she removed?
A. She had none at the time, but she had lost one.
Q. What sort of a grocery store did she keep there?
A. Sold a little of everything—a general grocery store.
Q. Did she keep any liquors?
A. I don't know. I never had any occasion to buy any.
Q. Did you never see any one else buy liquor there?
A. Never, sir.
Q. Never hear her say whether she kept any?
A. No, sir.

Q. How often, if at all, did you see Mr. Nailor while they
993 lived on E street?
A. I couldn't say; he was always going backwards and forwards.
Q. How often did you talk with him during the time he lived there?
A. I talked with him every time I went into the grocery store, but I couldn't say how often.
Q. What was he doing in the store-room?
A. He used to wait upon me very often when I went there.
Q. Was there a sign up over the door?
A. No, sir.
Q. Did you continue to reside on E street after Kate Conley removed to 14th?
A. Yes, sir.
Q. How long?
A. It is two years and a half since I removed from E street. I

should have said that it is four years since I moved from E
994 street. I couldn't say how long I lived on E street after Kate Conley moved away.

Q. How far did Kate Conley live from you after she left E street?

A. I don't know how many squares; never counted them up.

Q. Half a mile?

A. I couldn't tell whether it was half a mile, or what.

Q. Have you no idea of distances?

A. No.

Q. How often did you see Kate Conley and Mr. Nailor after they removed from E street?

A. Sometimes twice in a week, sometimes once in three weeks, and sometimes it would be a month before I saw them.

Q. How did you happen to see them when you did?

A. I went to the house to see her.

Q. What occasion had you to go to their house after they moved?

995 A. Because I wanted to go and see her, and see how she was.

Q. Did you go to visit them?

A. Upon the first occasion I went as a nurse.

Q. Did you afterwards visit them?

A. Yes, sir.

Q. Continue those visits occasionally up to the time Mr. Nailor died?

A. Yes.

Q. And since?

A. Yes.

Q. Did you know that Kate Conley was not married to Mr. Nailor at the time you were making your visits there?

A. I did.

Q. Did you know he had a wife and family living?

A. Yes, sir.

Q. Were you married at the time?

A. No, sir; I was a widow.

Q. Were you a widow when you first became acquainted with Kate Conley?

A. Yes, sir.

Q. When did your husband die?

996 A. He died the month before Lincoln took his seat.

Q. Have you never married since?

A. No, sir.

Q. What was your husband's name?

A. William A. Wilson.

Q. Where did he die?

A. He died on E street, near 17th street.

Q. How long before Mr. Nailor's death did you last see him?

A. I think it must have been at least three weeks.

Q. Was he a well, stout appearing man when you knew him?

A. He used to complain of dyspepsia a good deal.

Q. Nothing else?

A. No; he used to complain of dyspepsia. If he had other complaints I wasn't aware of it; he may have had though.

Q. Did you ever know him to be sick?

A. No more than complaining of dyspepsia; he used to lie on the lounge sometimes and complain of that.

997 Q. Did you ever hear of his being sick before the sickness of which he died?

A. Only his complaints of dyspepsia.

Q. Did he seem to be as well as any man, with that exception?

A. Apparently.

Q. Did you always see him in the house when you went there?

A. Not always; sometimes he would be out and sometimes upstairs.

Q. Was he generally in the house when you were there?

A. I suppose about one-half the time he was and the other half he wasn't.

Q. Were you generally there in the day time?

A. Yes, sir; I was never there at night.

Q. What business was Mr. Nailor engaged in?

A. On 14th street he didn't do anything; I don't know whether the store on E street was his or Miss Kate's.

998 Q. Did they continue to live on 14th street until he died?

A. No, sir.

Q. Did you never see Mr. Nailor under the influence of liquor?

A. When he lived next door to me I have often seen him go out perfectly sober and come back under the influence of liquor; but I never saw him under the influence of liquor in his house when I have been there.

Q. Did you never see him go away from his house under the influence of liquor?

A. No, sir.

Q. Was he always sober when he went away from the house?

A. Whenever I saw him go away he was always sober.

Q. How do you know?

A. By his looks and appearance.

Q. Always near enough to him to tell that?

A. Yes, sir; because he passed by the window and I was

999 sitting there sewing. At that time there was no pavement on E street, and he had to walk close up to my window to keep out of the mud, and I couldn't help seeing him.

Q. Did he always come back drunk when he went away sober?

A. Not always.

Q. Could you tell readily when he was under the influence of liquor?

A. I could, because when he came back home he was so boisterous, and living next door I couldn't help but hear his voice.

Q. Did that occur frequently?

A. Right often. He didn't come back drunk every time, but pretty often. I couldn't tell how often. He always went away sober.

Q. You are positive of that?

A. Pretty positive; yes, sir.

Q. Did he look like a hard-drinking man?

A. I don't know; you can't always tell by the looks of a man.

1000 Q. Did he talk with you a good deal about making provision for Kate's children?

A. Yes, sir; upon several occasions he did.

Q. Did he not speak to you about it on more than several occasions; did he not speak about it a good many times?

A. A good many times.

Q. Were you informed that Mr. Nailor had made a will or some deeds in favor of those children and Kate?

A. He told me so himself.

Q. Anybody else tell you that?

A. No, sir.

Q. It seemed to run in his mind a good deal, didn't it?

A. Yes, sir.

Q. He didn't talk about anything else much, did he, for awhile?

A. Yes; about other things, too.

Q. About when was it he was talking so much about that?

A. I suppose for the last three or four years before he died.

1001 When the children were living he used to talk a good deal about making provision for them. After they died I didn't see so much of him.

Q. Did he continue to talk about making provision for them clear up to the time they died?

A. Yes, sir.

Q. When did he tell you he had made a will or deeds for them and Kate?

A. If I can trust my memory, it must have been in the year 1877. He told me — had willed the property on 14th street to his son Willie.

Q. When was it he told you that?

A. I couldn't tell you what year it was, but it was the same year Willie was born.

Q. When did he tell you he had made further provisions for the children and Kate?

A. As I said before, I may be mistaken, but if I can trust my memory it was 1877.

Q. How long was it before he died?

1002 A. I couldn't say that.

Q. Did he say he had made a will in their favor?

A. He said he had made provision for the children and only wished he had plenty of money to leave them.

Q. What did you say to him about it when he was talking about making provision for them?

A. I told him I thought he was perfectly right to do so; they were his children, he claimed them to be such, and ought to provide for them.

Q. You rather encouraged him in doing so?

A. No, sir; I think it was only just. Another thing, I thought Mr. Nailor had a will of his own and didn't need any encouragement.

Q. Did you and he ever talk about that in Kate's presence?

A. On two occasions I know she was not in the house, be-
1003 cause she had gone to market. I won't be certain whether she was ever present.

Q. Kate was rather opposed to it, was she not?

A. I don't know, she never said. I told you that on two occasions she was not present.

Q. Did you never hear Kate say anything about Mr. Nailor's providing for her and the children?

A. Yes, she has mentioned it since his death.

Q. Never before?

A. Not to my recollection

Q. What has she said about it since his death?

A. No more than speaking about collecting the rents of the property he had left her.

Q. Kate didn't know that Mr. Nailor had made any provisions for her and the children until after he died, did she?

A. I do not know. Yes, sir; she did about this will, that
1004 he willed his property on 14th street. I know that she knew that.

Q. Have you been quite intimate with Kate since Mr. Nailor's death?

A. I go there occasionally; not to say intimate.

Q. What employment have you had from her since Mr. Nailor's death?

A. No employment.

Q. Done nothing for her?

A. No, sir.

Q. How did Kate treat Mr. Nailor?

A. With all kindness?

Q. Wasn't she cross to him?

A. I never heard her speak a cross word to any one, in fact.

Q. She wasn't very kind to him, was she?

A. Deed she was, sir.

Q. Now, what did she do, and how did she treat him that makes you say she was kind to him?

A. By her attention to him when he was sick, as a wife does
1005 for her husband, attending to all his wants.

Q. Was he ever sick?

A. He had a case of dyspepsia.

Q. He had the dyspepsia all the time, didn't he?

A. Whenever I went there he always complained of dyspepsia; that's all I can tell you.

Q. Always complaining with it, wasn't he?

A. Not always, but when he did he complained of dyspepsia.

Q. And then she was always kind to him?

A. Always kind; she couldn't have been kinder.

Q. What did she do that was kind, except take care of him when he was sick?

A. Do you want any more kindness than that? She waited on him and attended to all his wants, and I know he was very cross when he was sick.

Q. Was he frequently confined to his bed?

1006 A. I never see him on the bed yet, I always saw him on the lounge.

Q. See him there frequently?

A. Right often.

Q. Where was that lounge when they lived on E street?

A. In the room back of the store.

Q. What they called the sitting-room?

A. I suppose so. I don't know what they called it.

Q. Did you know of Kate's being arrested for selling liquor without a license, or keeping a disorderly house, while they were living on E street?

A. No, sir.

Q. You think Kate ought to succeed in this suit, don't you?

A. If it is just, I think she should. If her name has suffered she ought to have remuneration for it.

Q. Your sympathies are with her?

1007 A. No; I can't say exactly. Of course, I want to see her righted like any other woman.

Q. When did you see Kate last?

A. One day this week.

Q. How did you happen to come here to testify?

A. I came to see Lawyer Carrington.

Q. Who told you to come and see him?

A. Miss Kate merely said she would like me to see Lawyer Carrington, and I did see him.

Q. Didn't you and Kate talk the matter over before you came up to see Mr. Carrington?

A. No; we didn't make it a general talk. She asked me to see Mr. Carrington, and I did so. What questions he asked me I answered.

Q. Did Kate come with you?

A. I overtook her in the street. I was coming from my son's, and didn't know where the office was, and she came with me.

Re-examined by Mr. CARRINGTON:

1008 Q. You say that you saw Kate Conley one day this week; was it the day you came with her to my office?

A. Yes, sir.

Q. How long have you lived in Washington?

A. I am fifty-eight years of age and was born in Washington.

MARY S. WILSON.

Subscribed and sworn to before me this 3d day of March, A. D. 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until March 4th, 1880, at 3 p. m.

1009 *Deposition of William A. O'Meara for Defendant.* (*Filed Jan. 14, 1881.*)

THURSDAY, *March* 4, 1880.

Met pursuant to adjournment.

Present: Gen'l Rutherford and E. C. Carrington, Jr., for defendant, and C. C. Cole, Esq., for complainants; whereupon WILLIAM A. O'MEARA, a witness of lawful age, produced, sworn and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON:

Q. Where do you live?
A. I room at 117 Penna. Ave.; my home is 219 C street N. E.
Q. What business are you engaged in?
A. In the grocery business.
Q. Where is your place of business?
A. 1310 D street northwest.
Q. How long have you been carrying on business at that place?
A. About two years.
Q. From whom did you rent the property?
1010 A. Allison Nailor, Jr.
Q. Did you know Allison Nailor, Sr., now deceased?
A. Yes, sir.
Q. Under what circumstances did you become acquainted with him?
A. By his coming there and claiming to be the owner of the house.
Q. About what time was that?
A. It was after I had been in there some months.
Q. Did you have a conversation with him at that time, and, if so, state it fully.
A. Yes; Mr. Nailor came to me and said that he wanted the rent for that property. I told him that I didn't know him, that I had never met him before, consequently could not pay him. He stated to me then that the property belonged to his children and Mrs. Conley was the trustee, I believe, and that he was her agent, and only him and her had a right to that money. I told him
1011 that I did not know anything about the arrangements of the property, where it was, or anything about it, and that I had rented it from Allison Nailor, Jr., consequently couldn't pay him. He went away then and came back again some time after that, and said if I didn't pay him the money he would put me out—give me notice to leave. I told him, well, he would have to go ahead; that it was rather hard coming on me; that if there was any difficulty he should go to the party I paid the money to—that is, to Allison, Jr., and not to bother me about it. After some more words, I said, well, Mr. Nailor, if you are entitled to the rent of this property you should get an order or something to entitle him to it; that I would pay it to whoever had the right to it. There was an order came, I
1012 think from the court. I showed it to Allison Nailor, Jr., and after that Allison Nailor, Sr., collected the rent for a short

time, and then there came another order from the court directing it to be paid to Allison, Jr., again.

Q. Did you see Allison, Sr., after that on other occasions?

A. Yes, sir.

Q. How frequently would you see him?

A. He used to drop into my store occasionally.

Q. What would he do when he came in?

A. Sit down and read the morning paper.

Q. Did you converse with him?

A. Yes, sir.

Q. On what subjects?

A. Different subjects; he used to talk when he came in on the topic of the day—what was in the paper.

Q. What seemed to be his mental condition?

1013 A. He seemed to be all right mentally, from his conversation.

Q. Did he ever bring any of these children with him to the store?

A. Yes, sir; he used to bring the little boy over with him occasionally.

Q. Did he talk to the child?

A. Yes.

Q. What would he say to him; what was the manner of his conversation; how did he address him?

A. That is more than I can recollect. He had the little boy there, seemed to be fond of him, and talked a good deal about him. The little boy generally sat out in the phæton or carriage that Mr. Nailor came over in.

Q. What would he say about him?

A. I can't recollect.

Q. Would he take anything home with him from your store?

A. Yes; he used to take home groceries occasionally.

Q. Anything else?

1014 A. Whatever I had in the store that he wanted.

Q. Wasn't he in the habit of taking home apples or cakes, or something of the kind, saying they were for the children?

A. Yes; he used to always ask for an apple for the little boy—take one off the stand.

Q. What was Mr. Nailor's habits, as far as you saw, as to the use of intoxicating liquors?

A. I have seen him take a drink. Generally when he came over, as he was going, I would ask him to take a drink, and he would take one. I never saw him take more than one drink on any one occasion, and sometimes he didn't take any. He never bought any liquor from me.

Cross-examination by Mr. COLE:

Q. How long have you been doing business at 1310 D street?

A. I think near two years.

1015 Q. How did you happen to apply to Allison Nailor, Jr., to rent the property?

A. He was collecting the rent of it at that time; the party who was in it was paying him the rent.

Q. How did you learn that?

A. From the parties who were living in it before I rented it.

Q. Did you know Allison Nailor, Sr., at that time?

A. No, sir.

Q. How long after you went into that house before you first met him?

A. I judge it might have been two months, three months, four or five months; I have no recollection.

Q. Did he come for rent on the first occasion that you met him?

A. I think he did; I am not positive; my first recollection of him, that is personally, was when he came for rent; I had
1016 seen him before, but not to have a conversation with him.

Q. Now state precisely what Mr. Nailor said to you about the rent when he first came to see you.

A. He came in there and stated that he had deeded that property to the children, in trust to Mrs. Conley, and that she was the only one entitled to collect the rent; and that he was her agent, and nobody else had a right to the money but him and her; that was the substance of it, as I recollect it.

Q. Did he ever say anything to you about paying rent after that time?

A. I refused to pay him rent that time; he came again after the rent, and I told him that I didn't know him as having anything to do with the property, as I had rented it from Allison, Jr., consequently refused to pay him; that was the first time.

1017 Q. How many times did he come to you for rent?

A. I don't know how often; it wasn't many months, though.

Q. Did you ever pay him any?

A. Yes, sir.

Q. Did you take his receipt for it?

A. I never took a receipt from him; I took his receipt as agent for Mrs. Conley.

Q. Who wrote the receipt-?

A. I think I wrote some of them.

Q. How many times did you pay to him?

A. I don't recollect.

Q. Have you no idea?

A. I don't suppose it could have been long; it wasn't many months; I don't recollect how many; after I started paying there came an order to pay it to Allison, Jr., again.

Q. Did he ever demand any rent of you after you got the order from the court to pay it to Allison, Jr.?

1018 A. I don't think he did.

Q. How long after you first went in there before you got the order from court to pay it to Allison, Jr.?

A. I don't recollect.

Q. How long after Allison Nailor, Sr., first demanded rent of you until he begun to come there with the little boy you have spoken of?

A. My recollection is that he brought the little boy with him when he first came after the rent.

Q. You think you had been in there about five months when he first demanded rent of you?

A. Not positive; it might have been three, six, eight months; there is nothing to call it up in my mind, unless I should go and look at the receipts.

Q. Have you no recollection at all about how long you
1019 had been there paying rent to Allison Nailor, Jr., before the old gentleman demanded rent of you?

A. No; as I say, it never ran through my mind at all; I do recollect, though, that he was after it a month or two before he got it.

Q. How frequently did you pay your rent?

A. Every month.

Q. Now, how many payments had you made to Allison, Jr., before Allison, Sr., made demand on you?

A. That I don't recollect.

Q. Had you made any?

A. Yes.

Q. More than one?

A. I think so.

Q. As many as three?

A. It might have been.

Q. What is your best recollection?

A. I haven't any real knowledge, nothing that I can go by that is in my mind; I have receipts, of course, from Allison Nailor, Jr., up to the time the old gentleman got it.

1020 Q. How frequently did the old gentleman go to your store with the little boy?

A. I don't know how frequently; I know he has had him there?

Q. More than once or twice.

A. I guess so; yes; I know he has had him there more than twice.

Q. Was he ever at the store with the boy before he made demand for the rent?

A. No.

Q. For how long a time did his visits to the store with the boy continue from the time they first commenced?

A. I suppose he brought him there occasionally until he died. I have understood that the little boy died.

Q. How long did the old gentleman continue to come to the store?

A. He continued to come there until he was taken sick and died.

1021 Q. About how often was he at the store?

A. Often and on. He used to come round after the morning paper. After he moved over he came oftener than when he lived on the Island.

Q. As often as once a day?

A. I don't recollect; he might have.

Q. Can you say positively that it was as often as once a week, on an average?

A. When he lived over on 14th street it wasn't so often, but when he moved over on 12th street, I judge it was once a week. I have nothing to go by, except his coming there to read the paper.

Q. Did he stay long at a time?

A. I should call it long; his object mostly was in reading the paper; he would talk sometimes while reading the paper.

Q. Did you ever see him under the influence of intoxicat-
1022 ing liquor?

A. Once is all I recollect of.

Q. When was that?

A. When, I couldn't tell. He came there one day, outside the door, under the influence of liquor, in his buggy, and I sent my man over home with him.

Q. Are you still in the same store?

A. Yes, sir.

Q. Who did you pay rent to?

A. Catharine Conley.

Q. How long have you been doing so?

A. Since I received an order from the court, I believe.

Q. Did you ever receive any order from the court to pay rent to Catharine Conley?

A. Yes, sir.

Q. Where is it?

A. I don't know.

(The answer is objected to unless the order is produced.)

Q. Did you ever pay her any rent before you received that order?

1023 A. I never paid it to her in person. I paid it to the old gentleman, and got her receipts from him.

Q. Did you pay no rent from the time the old gentleman died until you got that order?

A. No, sir.

Q. Did anybody demand rent of you?

A. Yes, sir.

Q. Who?

A. Wash. Nailor here; he came for rent, and another party came. I think his name was Reed, and Mrs. Conley came.

Q. How much rent are you paying?

A. Fifteen dollars a month.

Q. Did you ever transact any business with the old gentleman?

A. None only what I have stated.

Q. How long have you lived in Washington?

A. About twenty-eight years.

1024 Q. How old are you?

A. Thirty.

Q. Where were you born?

A. In Virginia.

Q. Will you produce the receipts which you say you have from Allison Nailor, Sr., for rent?

A. Yes; if they are there on the file.

Q. How often did the old gentleman come to the store with the little boy after you got the order of the court to pay the rent to Allison, Jr.?

A. I don't know that he came at all; I don't recollect.

Q. Do I understand you to say that when you paid the rent to the old man he delivered you her receipt for it?

A. Yes, sir.

Q. Then he didn't sign the receipt himself?

A. Yes, sir.

Q. Did they both sign it?

1025 A. Both names were on there. It is a receipt from Catharine Conley per Allison Nailor, agent.

W. A. O'MEARA.

Subscribed and sworn to before me this 4th day of March, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until to-morrow at 3 o'clock p. m.

Deposition of Kate Watson for Defendant. (*Filed Jan.* 14, 1881.)

FRIDAY, *March* 5, 1880.

Met pursuant to adjournment.

Present: E. C. Carrington, Jr., for defendant, and C. C. Cole, Esq., for complainants; whereupon KATE WATSON, a witness of
1026 lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says, as follows:

By Mr. CARRINGTON:

Q. Where do you reside?

A. Between 14th and 15th and B and C, at the Commissary.

Q. How long have you lived there?

A. Four years the 10th of next November.

Q. Are you married?

A. Yes, sir.

Q. How many children have you?

A. Five.

Q. Did you know Allison Nailor, Sr.?

A. Only since I have been living over there.

Q. Do you know Catharine Conley?

A. Yes; since I have been living over there.

Q. State the position of your house to the house in which Catharine Conley and Allison Nailor, Sr., lived, on 14th street?

A. On the same building lot.

Q. What separated the two yards?

A. One row of planking.

1027 Q. Were you in the habit of visiting the house while they lived there; and, if so, how often?

A. I couldn't say how often; sometimes twice a week; sometimes three times; if there was any one sick, sometimes every day.

Q. Whom did you see in your visits?
A. The old gentleman and Mrs. Conley and the children.
Q. Did you see him elsewhere than the house?
A. No, sir; only going in and out from the buggy.
Q. Did you see him in the yard or stable?
A. Yes, sir.
Q. What was he doing at those times?
A. He would be nailing up; fixing the cow's trough; picking up sticks; sometimes fixing up the children's wagons.
Q. Do you remember when the children were sick with the scarlet fever?
1028 A. Yes, sir.
Q. How often did you visit the house during the period of their sickness?
A. I went every day; sometimes twice. I had sickness of the same kind myself. I went when I could spare time.
Q. What do you mean by saying you had sickness of the same kind yourself?
A. My own children had the scarlet fever.
Q. Did your child contract the disease before Catharine Conley's, or not?
A. Yes, sir.
Q. Did your children and hers play together before your chiid was taken sick?
A. Yes, sir.
Q. Did you say anything about your child's illness to her or to him?
A. Yes, sir; as soon as I found my child had the scarlet
1029 fever I sent word to them if theirs never had it to keep them home.
Q. Did you have any conversation with Mr. Nailor about the treatment of the disease these children had contracted?
A. Yes, sir.
Q. What was it?
A. He would ask me what I was doing for my children, and I would tell him what the doctor ordered, and then he would say, Yes, it was such a dreadful disease, that he did not believe his doctors were doing right in bathing. My doctor didn't bathe; and that's the sort of conversation we had. He said he dreaded the disease, because he had lost three children in nine days before with it.
Q. Did he tell you what he thought was the best treatment?
A. He said so the throat was kept clear he didn't think there would be so much danger.
Q. Did your child recover?
1030 A. One of my children recovered and was out before his took it at all; the other one died.
Q. Did you see him after the death of the children?
A. Yes, sir; and helped to lay them out.
Q. What did he say and do at that time?
A. He seemed to grieve a great deal. He would go from room to room and cry and lament his children.

Q. Did you see him at other times in company with any of the children?

A. Yes, sir.

Q. How often?

A. Every day.

Q. What was he doing with them?

A. He would take them out riding, out walking in the side alley, up and down the yard and stable, especially the little boy.

Q. How did he treat the children?

A. He treated them like any other father would. He never
1031 seemed easy unless the little boy was with him.

Q. Did you ever talk with him about the children?

A. Yes, sir.

Q. What would he say?

A. He would say that this was such a dear little thing, the little girl, and what he was going to do; that he was going to send them to school, and if he should live what a smart man he intended to make out of the little boy, and all such talk as that.

Q. What would he say about the boy Willie?

A. That he was going to provide for him, send him to school.

Q. Did you converse with Mr. Nailor on other subjects?

A. No, sir; not a great deal.

Q. What other subjects would you talk about?

A. Sometimes about his farm, sometimes about his property in the different sections of the city—whatever would be
1032 the event of the day.

Q. How did he talk?

A. I don't know how you mean; he would talk like any other gentleman would.

Q. What was his mental condition?

A. It always seemed to very good to me; he would speak of when he was a young man, and all the like of that.

Q. Did you see him and Catharine Conley together?

A. I did, sir.

Q. What was their treatment of each other?

A. She always seemed to be very kind to him; he also done the same.

Q. Did you see any member of his family visit the house?

A. I saw a brother of Mr. Nailor once; I wasn't acquainted with any of the family.

Q. Anybody else?

A. No, sir; unless it would be some of the neighbors going in and out.

Q. Do you know Allison Nailor, Jr.?

1033 A. I do, sir, when I see him now.

Q. Did you him or any member of his family there?

A. No, sir; I did not, for I did not know them; my little girl has.

Q. What were the habits of Allison Nailor, Sr., as to the use of intoxicating liquors?

A. I myself never saw him take but two drinks—one a milk punch and the other a raw whiskey.

Q. How often have you seen him intoxicated?

A. I couldn't say exactly; I have seen him twice or three times come home what I call pretty tight.

Q. Are you acquainted with other persons who know Catharine Conley?

Q. I have heard a good many, such as the neighbors, speak of her, but none that you may say were personally acquainted with her.

1034 Q. Do you know her general reputation for chastity in the neighborhood where she resides?

A. Yes, sir.

Q. What is it—good or bad?

A. Very good, sir.

(The last two questions and answers objected to by Mr. Cole.)

Adjourned until Monday next, March 8, 1880, at 3 p. m.)

MONDAY, *March* 8, 1880.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and E. C. Carrington, Jr., and Charles Thompson, Jr., for defendant; whereupon the cross-examination of the witness, KATE WATSON, is commenced.

By Mr. COLE:

Q. In whose house do you live?

A. Mrs. Sullivan's.

Q. For how long a time did you know Mr. Nailor?

1035 A. I moved over there the 10th of November, three years ago last November, and saw him every day.

Q. Are you certain you saw him every day?

A. Yes; quite sure.

Q. Where?

A. Sometimes sitting at the window, sometimes going in and out to the carriage, sometimes sitting by the window, sometimes going in and out the stable, and sometimes when I went in and out to get milk.

Q. Wasn't he sick during that time any?

A. Oh, yes, sir.

Q. Did you see him there every day?

A. Yes, sir.

Q. Where?

A. In his bed, while he was confined to it.

Q. How much of that time was he sick in bed, do you suppose?

1036 A. I couldn't exactly tell that. He had three very bad spells during the time I knew him.

Q. How often did you talk with him?

A. I spoke to him every day, of course, when I see him; good

morning and how do you do, and the like of that; the event of the day, whatever that would be.

Q. How did Kate treat him?

A. She always treated him very good whenever I saw.

Q. How?

A. When he was sick she always waited on him, sat up with him night-; always seemed to be very attentive in giving him his medicine or any nourishment, and the like of that.

Q. Was he well much of the time?

A. Yes; he used to complain of the dyspepsia; he used to be going about in the yard and stable and working around. He used to read the paper every morning.

1037 Q. He was complaining all the time, was he not?

A. No, sir; I don't think he was. Sometimes I would say, Good morning, Mr. Nailor; how are you this morning? and he would say I have got this old dyspepsia again, and the like of that.

Q. Did you know Mr. Nailor and Kate Conley were not married?

A. Not for some time, sir. I didn't know then only what I heard people say.

Q. Did you continue to go there after you learned it?

A. Yes, sir; whenever there was sickness.

Q. Only when they were sick?

A. Yes, sir; I never made a visit until after they moved over to the city, unless there was somebody sick.

Q. Did you continue to go there at all after you learned they were not married?

A. Yes, sir.

1038 Q. Do you consider that a woman who lives with a man without being married to him has a good reputation for chastity?

A. No, sir; I do not.

Q. Why, then, do you say Kate has?

A. That I can hardly answer.

Q. Is your husband living?

A. Yes, sir.

Q. Do you live with him?

A. Yes, sir.

Q. Have you always lived with him since you were married?

A. Yes, sir.

Q. What is his business?

A. He drives a light spring wagon for the quartermasters.

Q. Have you any children?

A. Yes, sir.

Q. How many?

A. Five.

Q. Boys or girls?

A. Four boys and one girl.

Q. Do you know anything about Mr. Nailor's having made a deed or will in favor of Kate and her children?

1039 A. I heard him say so; I didn't see it.

Q. How did he happen to tell you that?

A. He was speaking one day, and he said the house over there belonged to Willie, and a farm, and a house in the city was the little girl's; that is all I heard him speak of.

Q. How long ago was that?

A. That was about last summer a year ago.

Q. That — all you ever heard him say about it?

A. Yes, sir.

Q. Have you visited Kate Conley any since Mr. Nailor died?

A. Yes, sir.

Q. How often?

A. That I couldn't tell you, whenever I came to the city and was going that way I would stop in.

Q. When did you see her last?

A. I think it was last Monday.

Q. Did you ever talk with her about this case?

A. Not a great deal.

1040 Q. You and she are very friendly, are you not?

A. Well, tolerably friendly as neighbors. I always treated her well when she was sick. I was there when the old gentleman died; she always appeared to be very friendly.

Q. Do you still live near her?

A. No, sir.

her
KATE x WATSON.
mark.

Test: I. WILLIAMSON.

Subscribed and sworn to before me this 8th day of March, 1880.
IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until to-morrow at 3 o'clock p. m.

MARCH 6, 1880.

Met pursuant to adjournment.

Present: same counsel as at last session; whereupon, no witness appearing, adjourned until March 8, at 3 p. m.

1041 MARCH 8, 1880.

Met pursuant to adjournment.

Same counsel present. No witness appearing, adjourned until March 9, at 3 p. m.

MARCH 9, 1880.

Met pursuant to adjournment, and, no witness appearing, adjourned until Tuesday next, March 16, at 3 p. m.

Deposition of Rosan-a Young for Defendant. (*Filed Jan.* 14, 1881.)

TUESDAY, *March* 16, 1880.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., for complainants, and E. C. Carrington,

Jr., for defendant; whereupon ROSANNA YOUNG, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

1042 By Mr. CARRINGTON, Jr.:

Q. Where do you reside?
A. On 14th street between B and C streets southwest.
Q. How long have you lived in that neighborhood?
A. About ten years on that street.
Q. Are you married or single?
A. Married.
Q. How long have you been married?
A. Twenty-two years next Easter Sunday.
Q. How many children have you?
A. I am the mother of ten children.
Q. Did you know Allison Nailor, Sr., and do you know Catharine Conley?
A. Yes, sir.
Q. How long did you know them?
A. Between five and six years.
Q. When did you first become acquainted with them?
A. Since they moved to 14th street.
Q. How near was your house to theirs?
A. Four doors from my house.
Q. Did you visit them frequently or otherwise?
A. Some days I visited them once, some days twice.
Q. What caused you to call upon them?
1043 A. My little girl was very intimate with a little boy named Willie, and I used to have to go after her.
Q. Did you have conversations with Mr. Nailor?
A. Yes, sir.
Q. Upon what subjects?
A. He was always talking about his little children; no subject in particular.
Q. Give some idea of what you would talk about?
A. He never talked about any of his business at all to me. I don't know exactly what to say. I thought I came up here to be questioned, so I would know what to say. I never was in a place like this before and I don't know.
Q. Did he ever talk to you about property?
A. Yes, sir.
Q. What did he say?
A. He read the deed of that house on 14th street; that he
1044 deeded to Willie Earnest Nailor, his little son, for ninety-nine years to school him and educate him until he come to twenty-one, and if he should die before he came to the age of twenty-one, it goes to his mother, Catharine Conley. That is all I heard him say about property.
Q. How did he treat these children?
A. He treated them splendid, as a father ought to do.
Q. What do you mean by treating them splendidly?

A. He was good and kind to them.
Q. Describe the way he acted towards them.
A. Every time he went out he brought things home to the children. Even when he had money he would come home and tell Willie to go into his pocket, there was a little change there for him.
Q. What was his treatment of Catharine Conley?
A. He treated her very good, as far as I know.
1045 Q. In what manner did she treat him?
A. She treated him like a baby.
Q. What do you mean by that?
A. I mean by that, she washed him and dressed him.
Q. Was she attentive to his wants?
A. She didn't do anything else but wait on him; that was all she done.
Q. Did Mr. Nailor complain of bad health?
A. All the bad health I heard him complain of was the water-brash and dyspepsia.
Q. What was his mental condition—the condition of his mind?
A. He seemed to have as good a mind as you or me, to me. I guess he forgot more than a good many knows.
Q. What were his habits as to the use of intoxicating liquors?
A. I wasn't there often enough to know, but I have heard
1046 him ask Katie to mix him a milk toddy or a mint punch, supposed to be nourishments, but I don't know. You will have to ask me plain questions, for I don't know the dictionary.
Q. Do you know other people who know Catharine Conley?
A. There is plenty in the neighborhood who know her as well as I.
Q. Do you know what her reputation for chastity is?

(Objected to by Mr. Cole.)

A. You will have to explain what you mean.
Q. Do you know her general reputation for virtue and chastity in the neighborhood in which she resides?
A. I told you I didn't know the meaning of this chastity.
Q. I mean to ask you whether her reputation was that of a decent, virtuous woman, or otherwise?
A. It would be very foolish in me to answer such a talk as
1047 that, for I still don't know what you mean. You must tell me what you are trying to get at.
Q. Was her reputation that of a loose woman, or otherwise?
A. Not as I heard of since she has been in that neighborhood; that's all I know.

Cross-examined by Mr. Cole:

Q. Who was present when Mr. Nailor read the deed to Willie to you?
A. None but myself, Kate Conley, and Mr. Nailor.
Q. When was it?
A. I can't exactly tell you when it was, but to the best of my knowledge I will tell you; between five and six years ago.
Q. Where was it?

A. In Mr. Nailor's bed-room.
Q. How did he happen to read the deed to you?
A. Miss Catharine Conley asked him to read it to me to see that he had deeded the house to the child.
1048 Q. Was there any other deed read at the same time?
A. No, sir; not in my presence.
Q. What was said about the deed at the time it was read?
A. There wasn't anything at all.
Q. Why did Kate want the deed read to you?
A. I don't know, sir, indeed.
Q. What makes you say that Kate was very kind to Mr. Nailor?
A. Because she was very attentive to him, waiting on him and doing for him; that is all I know.
Q. How many times did you ever see her mix toddy for him?
A. Once or twice.
Q. Not more than that?
A. No, sir; not while I was in there.
Q. Is your husband living?
A. Yes, sir; I hope he is.
Q. Do you know whether he is or not?
A. I left him alive at twelve o'clock.
Q. Have you lived with him all the time since you have been married to him?
A. I lived with him going on twenty-two years this Easter Sunday night all the time.
1049 Q. Have you lived in Washington all that time?
A. I have, sir.
Q. What is your husband engaged in now?
A. He does duty at the Comique.
Q. What kind of duty?
A. An officer there, keeping order.
Q. Police officer?
A. Private officer.
Q. Are you very friendly with Kate Conley?
A. I am not, sir.
Q. Have you continued to visit her since Mr. Nailor's death?
A. No, sir.
Q. When did you last see her?
A. Some time last week.
Q. Where.
A. She was down on 14th street, at that restaurant there, attending to some business.
Q. Did you meet her at the restaurant?
A. No, sir; I ain't in the habit of meeting people at restaurants.
Q. Where, then, did you see her?
A. On the pavement.
1150 Q. Did you speak with her?
A. Bid her the time of day, sir.
Q. That all?
A. Yes, sir.

Q. When and where did you last meet her and converse with her?

A. I didn't meet her at all; she was in my house.

Q. When was that?

A. I disremember whether it was Thursday or Friday. I can't say positively.

Q. Didn't she talk with you about this case?

A. She didn't say anything except to ask me wouldn't I please come up here; that is all she said.

Q. Didn't she ask you what you could testify to?

A. She did not.

Q. Did not she and you, on that or some other occasion, talk over what you could testify to?

A. No, sir; she didn't talk over anything. She knew I was
1051 there at the time, and asked me if I would go up there.

Q. Have you never called on Kate Conley at the house where she is living since Mr. Nailor died?

A. Not very often.

Q. Have you at all?

A. I had business up in the city at the grocery store and saw her at the door as I passed, and stopped and talked.

Q. Have you never been in the house where Kate Conley lives since Mr. Nailor died?

A. Once, I believe

Q. Not more than that?

A. No, sir.

Q. Are you quite certain?

A. To the best of my knowledge.

Q. How long ago was that?

A. Deed I can't tell exactly when?

Q. How often did you go there before Mr. Nailor died?

A. Maybe once or twice.

Q. Did not you testify in your examination-in-chief that
1052 you called there very frequently during Mr. Nailor's life, sometimes as often as twice a day?

A. Yes, sir; when they lived on 14th street.

Q. After they moved into the house where Conley now lives you only went there once or twice?

A. Yes, sir.

Q. Do you mean to say that you went there only once or twice in all during Mr. Nailor's life, or that you went once or twice a day?

A. Once or twice on 12th street.

Q. Why did you cease to go there when they moved to 12th street?

A. Because I had my work to do, and I hadn't time to go.

Q. How long did Mr. Nailor live after they went to 12th street?

A. I don't know, indeed. I never kept no account.

Q. About how long?

A. I can't say, nor I won't say, for I can't.

Q. Was it as much as a year?

1053 A. I can't say.

Q. Wasn't it as much as two years?

A. I don't know, sir; and there is no use in asking me. I have answered sufficient, I think.

Q. Was it as much as six months?

A. I have told you once that I don't know, and if you ask me from now till to-morrow morning I can't answer you.

Q. Was it as much as two months?

A. I object to answering, for I don't know anything about how long or how short, or anything about it.

Q. When and where did you last see Mr. Nailor?

A. I never made a practice of seeing Mr. Nailor, gentlemen.

Q. Can't you tell me when and where you last saw him?

A. No, sir; I have said all I know, and all I am going to say. I can't sit here all the time with you, gentlemen; work is waiting for me; I haven't got any servants.

1054 Q. When you were visiting Kate Conley and Mr. Nailor did you know they were living together without being married?

A. Couldn't say positively, sir, whether they were or were not; I don't know, sir.

Q. Did you never hear anybody say that they were living together without being married, during the time you were calling on them?

A. That was the rumor; I can't say positively what went on between them.

Q. Did you believe it?

A. Believe what, sir; that they was not married?

Q. Did you believe that they were living together without being married, during the time you were calling on them?

A. That is what the outside people said; I can't say positively one way or the other. It is fashionable now for gentlemen to have half a dozen wives, anyway.

1055 Q. Did you believe it?

A. I knowed he had a wife; I didn't know what Kate Conley was. I knew Mrs. Nailor myself.

Q. Then you did believe that they were living together without being married?

A. I supposed so.

Q. And still you called upon them?

A. Yes, sir.

Q. Do you know or believe that it is contrary to law and good *meals* for a woman to live with a man to whom she is not married?

A. Yes, sir; I believe it is.

Q. At what grocery store were you dealing during the time that you say you passed by Kate Conley's house, stopped and talked with her, when you were going to the store?

A. I generally go that way; I was dealing at O'Hare's.

1056 Q. What made you think there was anything in the deed saying that the boy should have the property for ninety-nine years?

A. What made me think? I didn't think at all, gentlemen; it was as the old gentleman read it; I have no business thinking.

Q. Are you sure that the deed said, the way it was read by Mr. Nailor, that the boy should have the property for ninety-nine years?

A. I have no reason to dispute his words; he read it of his own free will; I didn't ask it; it didn't benefit me. I am reaping no benefit of this, and don't wish to.

Q. Did the deed, as he read it, have the words ninety-nine years in it?

A. That's the way he explained it to me; I don't know any more; I am telling you just as it was said to me.

Q. Are you sure that this suit is no benefit to you?

1057 A. I can say positively it is no benefit to me. I am not doing it for benefit, nor wouldn't do it for benefit. I am not bought like a great many others are bought.

Q. Wouldn't it be some benefit to you if Kate should gain the case?

A. No, sir; I don't care who gains it, for my part. It makes no material difference to me whether one or the other gains it.

Q. Did you ever live in Baltimore?

A. I was born and raised in Baltimore, and ain't ashamed of it.

Q. Were you married there?

A. I was not. Go over to the court-house and look on the records and you will find out where I was married at.

Q. Have you lived in Baltimore any since you were married?

A. I have not. I have lived in Washington all the time.

1058 Q. Kate Conley wasn't very kind to Mr. Nailor, was she?

A. I have answered that question some two or three times now, gentlemen.

Q. And you don't know whether her reputation is good or not?

A. I don't know, sir; I haven't known the woman all her life or all my life.

Q. When you went to visit Kate Conley did you ever take any of your children with you?

A. Not when she lived on 12th street. I never taken any children with me.

Q. Did you when she lived on 14th street?

A. My children was always playing with hers when they lived on 14th street, so I had no need to take them; they taken themselves.

Q. What were the ages of your children that played with Kate's children?

A. One between nine and ten and one between four and five.

1059 Q. Where is O'Hare's store at which you dealt?

A. On 7th street between M and N.

Q. Did your husband ever live in Baltimore?

A. He was born and raised in Baltimore.

Q. Has he lived in Baltimore any since you were married?

A. No, sir; he has lived in Washington all the time.

Q. Has he worked or visited there any since you have been living here?

A. No, sir; he has not worked there. He visits there and I visit there whenever we feel like it.

Q. Did you ever borrow anything of Kate Conley?

A. I don't make a practice of borrowing or lending; what I haven't got I do without.

Q. Did you ever borrow anything of Kate Conley?

A. I neither lend nor borrow; what I haven't got I do without.

1060 Q. Can't you say either that you have or have not borrowed anything of Kate Conley?

A. I don't lend nor borrow; what I haven't got I do without it, so you can fill all the sheets of paper up with it. I am not prompted or paid by anybody.

Q. Do you refuse to answer the question in any other way?

A. I told you what I had to say, and all I had to say without you use my tongue. Do you want me to lie? I thought I was talking to and dealing with gentlemen. You don't want me to say what I don't know, do you?

Q. Did you ever borrow a shawl from Kate Conley?

A. I buy my shawls, gentlemen, and pay for them and wear them.

1061 Q. Are you quite certain that you did not borrow of Kate Conley that shawl you now have on?

A. I bought and paid for the shawl I have got on, and everything else I have got on.

Q. Who told you that Mr. Wash. Nailor abused all the witnesses that come here, as stated by you a few minutes ago?

A. Several parties that came here.

Q. Give their names.

A. Mrs. McCue, for one—a lady.

Q. Anybody else?

A. That's all, sir.

Q. Didn't you just say that several persons had told you so that had been here to testify?

A. Well, that's all.

Q. Then you were mistaken when you said that several parties who came here to testify had told you so?

A. I don't know so much about that.

Q. Where did you see Mrs. McCue?

1062 A. Oh! for goodness sake, don't she live in the neighborhood; you must think I am a regular rounder, don't you?

Q. Have you talked with her since she testified in this case?

A. She don't only talk to me; she talks to everybody.

Q. Who else was present when she talked to you about her testifying here?

A. I havn't any more to say.

Q. Do you refuse to answer the question?

A. I havn't any more to say, gentlemen.

Q. Why?

A. Because I am not able. I have said all I am going to say. I

have been sick over a month, and I think I have talked more than I have for a month. If I had known this I wouldn't have come up here for a million of thousand dollars. Here are three gentlemen trying to confuse one sick woman.

1063 Q. Has more than one gentleman on our side of the case asked you any questions?

A. Ain't Mr. Wash. Nailor telling that gentleman? Ain't that gentleman telling him to ask about that shawl? Why, the whole three of them.

Q. Has any one on our side of the case said anything to you since your cross-examination commenced which has not been written down by the commissioner in the form of questions?

A. I didn't see the business of asking about the shawl on my back. I didn't think that concerned the case. I consider it an insult.

Q. Was Kate Conley present when Mrs. McCue told you what occurred when she was down here to testify?

A. No, sir.

Q. Who was?

A. I don't know the ladies' names; strangers to me.

Q. Where was it?

1064 A. In the street.

Q. Where?

A. Standing on the street.

Q. What street?

A. 14th street.

Q. Whereabouts on 14th street?

A. The neighborhood she lives in.

Q. The neighborhood where who lives?

A. Where I live and where she lives.

Q. Who do you mean by she?

A. The lady, Mrs. McCue.

Q. How did you know she had been up here to testify?

A. She says — herself; that's how? All that's been here have said so.

Q. Have you talked with all that have been up here to testify?

A. I have talked with Mrs. McCue and Mrs. Watson; that's all.

Q. Those two all?

A. Yes, sir.

Q. How did Mrs. McCue know that you was coming here to testify?

A. Mrs. McCue didn't know I was coming here; that is not what I said.

1065 Q. You said a little while ago, but I don't know whether it was written down or not, that Wash. Nailor had been abusing and buying witnesses in this case and that you had come prepared to meet him. Who told you that he had abused or bought witnesses?

(Objected to by Mr. Carrington, Jr.)

A. How often will you ask me about the abusing; didn't I tell you two or three times?

Q. No; I have not asked that before, and you have not answered it. Won't you answer the question, and tell me who said that Wash. Nailor had abused the witnesses and bought them?

(Objected to by Mr. Carrington.)

A. I don't know what you mean; explain in plain English.

Q. Did you not say a short time ago to Mr. Wash. Nailor,
1066 who is sitting in the room, "I am not bought up, as I have heard you have bought others?"

A. I did.

Q. Well, then, from whom did you hear that he had bought others?

A. No person in particular, but a perfect rumor.

Q. Somebody must have told you; can't you give me the name of one person.

A. No, sir; I cannot.

Q. Have you talked to so many people about the case that you can't remember the names of those you have talked with?

A. I hav-n't spoke to anybody; but as like the rumors is so it is in this.

Q. But you can't give the name of one person?

A. No, sir.

her
ROSANA x YOUNG.
mark.

Test: I. WILLIAMSON.

Subscribed and sworn to before me this 16th day of March, A. D. 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

1067 Counsel for defendant asks the examiner to note that Mr. Washington Nailor and Mr. Mathew Trimble, complainants, have been present at this session and previous sessions during the taking of testimony for the defendant.

Adjourned until to-morrow at 3 o'clock p. m.

MARCH 17, 1880.

Met pursuant to adjournment, and, no witness appearing, adjourned until to-morrow, March 18, 1880, at 3 o'clock p. m.

Deposition of William F. Beans for Defendant. (*Filed Jan.* 14, 1881.)

WEDNESDAY, *March* 17, 1880.

Met pursuant to adjournment.

1068 Present: C. C. Cole, Esq., for complainants, and Gen'l Allan Rutherford and E. C. Carrington, Jr., for defendant; whereupon WILLIAM F. BEANS, a witness of lawful age, produced, sworn, and examined by and in behalf of defendant, deposes and says as follows:

By Mr. CARRINGTON, Jr.:

Q. Where do you reside:

A. About two miles above Tennallytown, in Montgomery county, Maryland.

Q. How long have you resided there?

A. Six years.

Q. From whom did you rent the property?

A. Allison Nailor, Sr.

Q. To whom did you pay the rent?

A. To Mr. Nailor, Sr.

Q. When was the last payment you made to him on account of rent?

A. The Christmas eve before he died.

Q. Have you the receipt for that rent? If so, produce it.

1069 A. I have.

(Witness here produces receipt of Dec. 24, 1878, which is filed by defendant's counsel and marked Exhibit C C No. 2.)

Q. In whose handwriting is that receipt?

A. Allison Nailor, Sr.

Q. Did you have any conversation with him at that time; and, if so, upon what subjects?

A. I don't remember any conversation. I was there but a short time.

Q. Did you see him frequently or otherwise prior to that time?

A. I saw him frequently.

Q. Where?

A. Sometimes at my place, sometimes at his house—usually at his house—once a week about.

Q. When was the last time you saw him at your farm?

A. The day I don't remember distinctly, but it was but a short time before his death.

1070 Q. Did you talk with him then?

A. Some conversation.

Q. What about?

A. Well, I spoke to him why he did not come over when he was up before. I was interested in the building, had some hauling to do. He said what had he to come out for now, Willie was gone, and he said he would give all his farms if he could get Willie back.

Q. Did you talk about the new building on that occasion?

A. I don't remember that we did.

Q. On what subjects would you converse when you saw him usually?

A. Generally about farming, agricultural.

Q. Did you talk any about the new building?

A. Oh, yes.

Q. What would he say about that?

1071 A. I remember on one occasion his saying that he wanted to hurry it up; that he did not expect to be here long.

Q. Did he seem to take any interest in the building?

A. He did.

Q. How would he show his interest?

A. He contracted with me, or rather I did with him, to do the hauling for him and boarding the hands.

Q. What would he say about farming?

A. He would speak of farming in a general way in regard to fertilizers, as to which would be best, the kind he used to use when farming, and so on.

Q. Did he seem to understand farming?

A. He seemed to have a good idea of it, as far as I was capable of judging.

Q. Did he seem to understand building and the construc-
1072 tion of such a house as was being erected upon the farm?

A. I liked the plan of the house myself very well and the location.

Q. Who selected the location?

A. He did himself.

Q. How did you find him in his money transactions with you?

A. I don't know that I understand what you mean.

Q. Was he close and shrewd or were you able to take advantage of him?

A. Close enough and shrewd enough for me. I never got any advantage of him.

Q. Did he seem to understand what he was doing in business transactions?

A. All the business I ever had with him I always thought he did.

Q. What was the condition of his mind during the period you knew him?

1073 A. Good. So far as I was capable of judging, his mind was sound.

Q. Did he ever talk with you about these children?

A. Not particularly, except on that one occasion I spoke about; he did then, I remember that.

Q. Do you know Washington Nailor, one of the parties plaintiff to this suit?

A. I know him by sight.

Q. Did you ever have any conversation with him about this suit?

A. On one occasion.

Q. State that conversation.

A. As well as I remember, he asked me how things were getting along up on the farm. I told him very well, as far as I knew. He asked me when that damned bitch, or some such remark, I don't remember the exact words, had been up there. I told him I
1074 presumed I knew who he meant; that I had taken her down that morning. He reproved me for having paid her some money. I told him that I felt myself in a very awkward situation, and I sent word to his mother, through my brother, that if they had the power to serve a notice on me to do it. I also told him that I believed that at the time the old man died that if I had a landlord or landlady that Miss Conley was my landlady. He made some slight remark about that, landlord or landlady, hell, or something

of that sort; that I could have paid them the rent if I chose; that she had nothing only what she had got in an improper manner, and that if they should lose it I would be safe, having the receipts.

1075 Then I believe that previous to that, when he had chastised me about paying the rents, he said that my paying the rent to her had caused the notice to be served on me from Rockville. I don't know that I remember anything more that I can relate just now. I can, too. He said there was a certain young married man who was going to get himself into trouble in regard to this thing, and, as I heard some remarks that he had made about me previous to that, it touched me a little, and I told him he had made some improper declarations in regard to me. He wanted to know what they were. I told him I understood he said I had had improper inter-intercourse with this woman, Miss Conley, and, if so, he had

1076 better make his points very strong, I told him. He said that seeing was knowing. I told him yes; that what a man saw he had a right to believe. Anything further than that I don't remember at that time.

Q. What did he say, if anything, with reference to your being a witness in this case?

A. He said he supposed I would be a witness in the case.

Q. Anything further?

A. I told him I didn't know whether I would or not. He said if I was a witness there could be questions I could answer; there might be others I could say I decline to answer, and, if so, there was a way to make me answer. I told him I supposed I knew the importance of a witness.

1077 Q. Is the farm you occupy one of the pieces of property in litigation?

A. Yes; I suppose it is.

Q. Are you married?

A. I am.

Q. How many children have you?

A. Five.

Q. What took you to Mr. Nailor's house so often?

A. Business of different kinds.

Q. How frequently would you go there?

A. After I commenced furnishing the old gentleman with butter, eggs, &c., generally once a week; sometimes oftener, when I had a little money to pay him, or as occasion might require.

Cross-examined by Mr. COLE:

Q. You say you are still living on one of the farms in controversy in this suit; do you know to whom it was conveyed?

1078 A. I have reason to believe to whom it was conveyed.

Q. To whom?

A. I heard the old gentleman say in the first place that he had given the place to the boy. Afterwards I saw the will and the deed, which was sufficient to make me believe.

Q. When did you see the deed?

A. After his death; I don't remember the date; a short time after his death.

Q. When did you first hear that he had conveyed the farm to Willie?

A. I don't remember the time exactly, but it was between the time the corn-crib was finished and the house begun. The corn-crib was commenced in 1877 and finished, I think, in the fall of 1877.

Q. When was the house commenced?

A. The spring of 1878, I think; May, I think.

1079 Q. When you learned that the farm had been conveyed to Willie, did you also learn that it was conveyed to Kate Conley in trust for him?

A. I did not.

Q. When did you first hear that?

A. I don't remember the exact reading of the will; it was the first I ever looked over; but it was after the old gentleman's death.

Q. Where did you read the will?

A. Here; the original or a copy, I don't know which; in this office.

Q. How happened you to come here to read it?

A. I come here to know. I was dunned for rent, and was directed here to Mr. Carrington, and he read the will and handed it to me.

Q. Who dunned you for the rent?

A. Miss Conley.

Q. How?

A. Simply asked me for it.

Q. Where?

A. At her house.

1080 Q. When?

A. The date I don't remember exactly, but about a month or six weeks after the old gentleman's death.

Q. How did you happen to be at her house?

A. I don't remember, but I think it was likely I had occasion to deliver butter, eggs, or produce that I was in the habit of supplying them with.

Q. How frequently have you been at her house since Mr. Nailor died?

A. Sometimes once a week; sometimes twice, probably.

Q. How did you happen to come to Mr. Carrington after she dunned you for the rent?

A. I refused to pay the rent; I objected to it. I didn't know who to pay it to, and she directed me to him for him to convince me, if he could.

Q. And so you came to see him?

A. I did.

1081 Q. And did he convince you?

A. I was convinced; if I hadn't been I shouldn't have

paid the money I did. There was no measures taken then in regard to this suit, that I had heard of.

Q. What convinced you?

A. The reading of the will, as far as I was capable of judging of it, and what I had heard previous to the old gentleman's death.

Q. What had you heard previous to the old gentleman's death that helped to convince you?

A. I had heard him say on one occasion that he had given the place to the little boy, which was about the time he was commencing the house; and on another occasion I spoke to him about rerenting, and he said he had nothing to do with it; to talk to her.

1082 She was sitting in the buggy with him. That was in the fall, just before the time of breaking up for wheat. I told him that was not satisfactory, and she said, That is all right, Mr. Beans; you farm on. That is what Miss Conley said.

Q. For what farm was the rent paid for which the receipt filed with your deposition was given?

A. The farm on which I reside.

Q. The one that you understand was conveyed to Kate Conley in trust for Willie?

A. It is given for rent for the farm on which I live.

Q. Did you ever rent any other farm from Mr. Nailor except the one on which you now live?

1083 A. I rented that farm with the understanding that I was to be furnished with firewood and rail timber. When I was about to go into that wood I was forewarned that it was in dispute, the lot he directed me to get this firewood and rail timber out of, a thirty-acre lot. I spoke to him in regard to it, and refused to go into it without I was indemnified. Then he gave me written authority to go into it. That I have, but not with me.

Q. Can't you tell me whether you ever rented any other farm or property from Mr. Nailor than the one on which you now reside?

A. I didn't go into a written agreement for any other. He indemnified me, as well as I remember, to take possession of the wood lots; there was more than one; there was a fifty-acre lot also.

1084 Q. Why did you take the receipt of Mr. Nailor for the rent paid by you to him on the 24th of December, 1878?

A. Because I believed him to be doing business for Miss Conley.

Q. Had he not told you before that time that he had nothing further to do with the farm or the renting of it?

A. He did with the renting of it on that occasion. I spoke simply of rerenting, and he said he had nothing to do with it; to talk to her.

Q. Then when you came to pay the rent, if you thought Mr. Nailor knew what he was doing, when he told you that he had nothing further to do with the farm, to talk to Conley about it, why didn't you pay her the rent?

1085 A. I didn't say he said he had nothing further to do with the farm. When I spoke to him about rerenting he said he had nothing to do with it; to talk to her about rerenting.

Q. And so you rented of her?
A. I rented from Mr. Nailor.
Q. When?
A. I have been there six years this January; that would put it in 1874.
Q. Was it a written lease?
A. It was.
Q. Where is it?
A. At home.
Q. Will you produce and file it with your deposition?
A. I will.
Q. What is the date of it?
A. I told you awhile ago. I have been there six years the first of last January.
Q. That don't answer the question; what is the date of the lease?
A. I will produce the article, then; that will answer it.

Adjourned until Monday next, March 22, 1880, at 3 o'clock p. m

1085½ *Exhibit C. C. No. 2. Filed with Testimony of W. F. Beans, Page 353. I. Williamson, Examiner.*

Received of Wm. F. Beans thirty dollars on account of rent.
Dec'm'r 24, 1878.

ALLISON NAILOR.

1086 MONDAY, *March* 22, 1880.

Met pursuant to adjournment.
Present: C. C. Cole, Esq., for complainants, and Gen'l Rutherford, E. C. Carrington, Jr., and Charles Thompson, Jr., for defendants; whereupon the cross-examination of the witness, WILLIAM F. BEANS, is resumed:

By Mr. COLE:

Q. Have you the lease and indemnity with you about which you spoke at your last examination?
A. I have.
Q. Let me see them.
A. Witness here produces the papers.
Q. This lease seems to be for the term of five years from the 1st day of January, 1874, and consequently expired on the 1st day of January, 1879; now when do you say it was that you asked
1087 Mr. Nailor about rerenting the farm and he told you he had nothing to do with it, to ask Conley?
A. It was the fall before it expired, but as to day and date I couldn't give; it was previous to seeding, as well as I remember.
Q. Did you then make a contract for rerenting the premises after the expiration of the lease you then held?
A. I did not.
Q. When did you?
A. Not at all; at no time.

Q. Then you never have had any permission to remain on the premises since the 1st day of January, 1879; is this so?

A. At that time that I spoke of rerenting he told me that he had nothing to do with it, to talk to her; she said, Mr. Beans, you farm on, that's all right; I said that was not satisfactory, that I
1088 wanted to know what I was doing; he gave his horse a cut with the whip; started off pretty keen, and left.

Q. And is that the last conversation that you had with either of them about rerenting the property during the lifetime of Mr. Nailor?

A. It was mentioned the day I paid him that money and got the receipt produced.

Q. What was said on that day about rerenting?

A. I don't remember; I only remember that it was mentioned; I was only there a few minutes.

Q. Why didn't you take Kate Conley's receipt for the rent you paid in December, 1878, instead of Mr. Nailor's?

A. I had been doing business with him; leased from him.

Q. And didn't you consider him the owner of the property at the time?

1089 A. I don't know that I spent any thoughts about it, which I ought to take the property from.

Q. How many payments did you make on account of rent between the 1st day of April, 1878, and the 1st day of January, 1879?

A. I don't remember.

Q. Several?

A. No; not several.

Q. More than one?

A. I really don't remember; the receipts will show.

Q. Where are the receipts?

A. I have some at home, and the one I showed you.

Q. About how often were you accustomed to pay your rent?

A. I paid it just as I had the money. I have paid as low as five dollars at a time.

Q. Have you no recollection at all whether you paid any rent between the 1st day of April, 1878, and the 1st day of January,
1090 1879, except the amount for which you show a receipt?

A. I have not at present. I paid it, and I have something to show I did pay it. There was a bill running, and it has been settled; there was also contract work.

Q. Did you pay any rent to Conley during the lifetime of Mr. Nailor?

A. I did.

Q. How many times?

A. Two different times that I remember of.

Q. When?

A. I don't remember when; it was before they moved over on 12th street; they were living on 14th street.

Q. Was that before the 1st day of April, 1878?

A. I am quite sure it was.

Q. Whose receipts did you take when you paid her?

A. I didn't take any. Mr. Nailor receipted for it afterwards.

Q. If Mr. Nailor was entitled to receive the rent during his
1091 lifetime, and you paid it to him, why, after his death, did you change your mind and pay to Conley instead of paying to the proper heirs or representatives of the estate?

A. I believed her to be at the time the proper heir of the estate, induced to believe so.

Q. What brought your mind to that conclusion?

A. Reasons that I stated the other day—his conversation, seeing the will. I had reason to believe so, I thought.

Q. Are you sure that it was a will that Mr. Carrington read to you when you came here for the purpose of ascertaining to whom you should pay rent?

A. I think it was.

Q. Was there more than one paper read to you?

A. As well as I remember, there was.

Q. What property was embraced in the papers read to you?
1092 A. The place that I reside on, a thirty acre lot, the O'Conner tract, I think it was called. As to the city property, I don't know where it was located.

Q. Where is the O'Conner tract?

A. It lays north of what they call the old home place, that my brother lives on.

Q. How much is there of that tract?

A. I don't remember.

Q. Is it an improved farm?

A. No, sir; I wouldn't consider it so.

Q. What sort of land is it?

A. I think it is right thin, right poor; at any rate it is in a poor state of cultivation; it is unimproved altogether.

Q. Is it cleared or wild land?

A. A portion of it is cleared; been under cultivation, but bushes over the most of it. All the portion that was cultivated, I think, has been cut off and given to an heir, one of the O'Conner's
1093 heirs; that which remains, I believe, has not been cleared.

Q. To whom did the will give the O'Conner tract?

A. I don't remember. I never saw enough of wills to remember much about them

Q. During the last two or three years of the old gentleman's life, about how often was he out to the farm?

A. It is hard for me to say just how often, but he was there more frequently than he was previous to that; the building was going on.

Q. How long would he generally stay when he went out?

A. From one to two, perhaps three hours, something like that.

Q. Did he go out as often as once a week, on an average?

A. He might be there once for two or three weeks, sometimes twice a week, and then again for three or four weeks he wouldn't be there.

1094 Q. Did he generally go alone or have somebody with him?

A. Generally had somebody with him.

Q. Who?

A. Sometimes Miss Conley, and generally his little boy.

Q. Was Conley frequently with him?
A. Yes; I believe she was.
Q. Where did he stop when he was there?
A. He usually stopped at Mr. Darcey's.
Q. Darcey, a hotel-keeper?
A. I don't know whether he kept a hotel before he moved.
Q. Did Mr. Nailor generally walk out on the farm when he came out?
A. Not generally.
Q. What would he do?
A. Generally set under the shade or walk as far as the stable, perhaps. I have known him to go out over the farm three or four times since I have been there.

Q. When Conley came out with him, did she generally sit
1095 out in the shade with him and walk with him when he did walk?

A. Generally did; I don't know that she ever walked with him on the farm; she sat with him in the shade generally when he sat there.
Q. How often did you call at Mr. Nailor's in the city while you had the farm under rent, in his lifetime?
A. Sometimes once and sometimes twice a week; sometimes not for two or three or four weeks, perhaps.
Q. What did you generally call for?
A. Generally to deliver butter, eggs, and such things in the produce line; sometimes on business.
Q. Did he give you credit on account of rent for the produce, &c., you delivered?
A. He did.
Q. Did you generally find Mr. Nailor at the house when you called?

1096 A. Generally.

Q. What would he generally be engaged in?
A. I don't know that I could say; sometimes reading and sometimes sitting on the sofa; lying down at other times, perhaps.
Q. Did you ever do any business with Mr. Nailor, except that connected with the renting of the farm?
A. Yes, sir.
Q. What?
A. We entered into an agreement for the hauling for the house that was being built, and the boarding of the hands.
Q. Anything else?
A. Settling some little accounts; I don't remember anything else.
Q. Did you know him to do or to be engaged in any business while you were living on the farm, other than what you have already mentioned?

1097 A. I don't remember of his being engaged, or of hearing that he was engaged in any other business.

Q. What sort of house was it that you speak of having been built there?

A. It was under construction; it was a frame house; I think it was twenty-eight by thirty-four feet; two stories high.

Q. When was that commenced?

A. As well as I remember, in May, 1878.

Q. Who had the contract for building it?

A. An old colored fellow; they called him Bob Wineberry.

Q. How far towards completion was the house when Mr. Nailor died?

A. It was raised, the frame-work, to a square; the rafters were not put on.

Q. How long were they working on it to get it in that state of completion?

1098 A. About four months, I think.

Q. How many hands were employed?

A. One; there was two. He took it from the stump, and had a helper for about twenty days. That was the time I had them charged with board. I had Wineberry's board charged for about four months and the hand for about twenty days.

Q. Was the frame out in the forest and framed and put up during the four months?

A. No, sir; during the time he worked there.

Q. Was that house being built on the farm you had under rent?

A. Yes, sir.

Q. Is there any other house on it?

A. The house I live in.

Q. What sort of a house was that?

A. A small frame, five rooms.

1099 Q. Comfortable?

A. Not very.

Q. As good as ordinary farm houses?

A. No, sir; I think not, by a good deal.

Q. How far from the house you live in is the frame you speak of?

A. I reckon about twenty yards.

Q. Did you ever see Mr. Nailor intoxicated?

A. I have.

Q. How often?

A. Saw him twice that I can speak of as being tolerable well in.

Q. Have you not very frequently seen him under the influence of liquor to a greater or less extent?

A. Perhaps I have. He was a man that drank a little, I suppose, all the time.

Q. Did you ever see him drink?

A. I have.

Q. Where?

A. Seen him drink in his own house; seen him drink

1100 at Mr. Darcey's, and he has drank in my house—not frequently, though.

Q. Did he take liquor with him when he went out to the farm?

A. Sometimes did; whether he did at all times I don't know.

Q. Did you ever see him drink in Kate Conley's presence?

A. I have.

Q. Often?

A. I don't know whether often or not; as often as occasion required, I judge. He didn't care who he drank before, I think.

Q. Where have you seen him drink in her presence?

A. I think I have in his own house..

Q. Any place else?

A. I think I have at my house, out under the shade, when he came out there in the summer time.

1101 Q. With whom did you contract to board the hands who were working on the house?

A. The principal conversation was with Mr. Nailor.

Q. And with whom was the rest?

A. Miss Conley.

Q. Where was this?

A. I don't remember the date exactly; previous to commencing the house, though. It was not reduced to writing.

Q. Has Kate Conley continued to visit the farm occasionally since Mr. Nailor died?

A. Been there a few times.

Q. Where does she stop when she is up there?

A. At my house.

Q. Did you know or had you heard that she was never married to Mr. Nailor and that he had a wife and family?

A. I heard so.

Q. Are you a married man?

A. I am.

1102 Q. Did your wife have the same knowledge on that point that you did?

A. Yes, sir.

Q. How frequently has she been to your house, both before and since Mr. Nailor died?

A. I don't remember the number of times before; I think she has been there four times since. She was very often with him when he came up.

Q. Did she stay some time on the occasion of her visits to your house since his death?

A. A week on one occasion; I think near two weeks on another; shorter times after that.

Q. With whom did she go out there on those occasions?

A. With me.

Q. Have you continued to call frequently on Kate Conley in the city since Mr. Nailor's death?

A. I don't know that I ever called on Kate Conley. What
1103 is the meaning of the question? Be more explicit and I will know better how to answer it, perhaps.

Q. Have you continued to call frequently at the house where she lives in this city since Mr. Nailor's death?

A. I have.

Q. Well, then, you have called on her frequently since Mr. Nailor's death, have you not?

A. Called on her? I have called on her on business.

Q. What business?

A. Well, I furnished her or Mr. Nailor—the house, rather—with butter and eggs while he was living, and continued to do so after his death.

Q. Are you still furnishing her with vegetables, eggs, and butter?

A. I sold her a bushel of potatoes about two weeks ago. She gets eggs when she wants them and I have them to spare.

Q. Have you continued to furnish her from the farm what
1104 she wanted and what you had to spare from the time of Mr. Nailor's death up to about two weeks ago?

A. Well, I didn't furnish her all I had to spare. She got what she wanted and paid for it.

Q. How did she pay for what she got?

A. Paid for it in money.

Q. Give you credit for it on account of rent?

A. No credit was given. She paid cash same as any one else.

Q. And do you pay her rent in money?

A. I do not.

Q. How do you pay it?

A. I don't pay it at all.

Q. Have you never called at Kate Conley's for anything but to furnish her with such things as she wanted from the farm?

A. I have.

Q. For what purpose?

1105 A. Different things. In fruit time there was some fruit canned out there for her; she was out there, and helped to can it.

Q. Did you never call there for any other than a purely business matter?

A. I never did.

Q. When were you last there?

A. I forget whether it was Tuesday or Wednesday of last week.

Q. Are you positive that you have not been there since Tuesday or Wednesday of last week?

A. I am.

Q. Were you not there on yesterday, Sunday, March 21st, 1880?

A. I drove by there in the milk wagon, and the day before, and the day before that, each morning.

Q. Did you not call there yesterday?

A. No, sir.

Q. Were you not at Kate Conley's, on 12th street, in this
1106 city, on yesterday, or did you not meet her yesterday at her residence or elsewhere?

A. I was in the milk wagon Friday morning, Saturday morning, and yesterday morning. I didn't get out of the wagon, and didn't converse with Kate Conley there or elsewhere.

Q. Do you furnish her with milk?

A. I do.

Q. Did you not see Kate Conley at the house where she then resided, and now resides, on 12th street, in this city, on the 26th day of October, 1879, and did you not come in from your place in the

country on a young sorrel colt, and arrive there about nine or ten o'clock in the morning, and remain until two o'clock or later in the afternoon of that day at her house?

1107 A. The date—I don't remember what day it was. I was there one Sunday, but as to the date I don't know.

Q. Did you not, on the Saturday evening immediately previous to that Sunday, meet Kate Conley at about eight or nine o'clock in the evening at Mrs. Kine's, corner of 20th and K streets, and when you left her that evening, about eight or nine o'clock, did you not have a private conversation with her near where your horses were standing?

A. I remember of having a private conversation with her. I think it was in the house.

Q. On the Sunday that you say that you was at Conley's, did you not, when you left home in the morning, say to your wife and family, or any other persons present, that you were going down the road on a little business and would return shortly?

1108 A. I might have made such a remark to some one present. I don't remember who was present. My wife knew where I was going.

Q. On the Sunday on which you say you were at Conley's, where did you leave the colt you rode into the city during the time you were staying there?

A. At Mr. Kine's stable.

Q. Did you ever go to a house with Kate Conley kept by a person known as Madame Black, near 18th street and New York avenue, in this city?

A. I never did.

Q. When you have taken Kate Conley out to your farm, what time in the day or night did you start to go out?

A. The first two times was after night market. I suppose about ten o'clock.

1109 Q. And how about the other two times?

A. Once she started from the Mash market, I suppose, about one or two o'clock, and the last time we got out there about six o'clock.

Q. Do you know a man by the name of William A. Leach?

A. I have met with a man by the name of Leach. I don't know what his first name is.

Q. Were not you and Leach at Kate Conley's, on 12th street, together the last of April or early in May, in the year 1879, soon after this suit was brought?

A. I met with a fellow by the name of Leach there. He was there when I went there on one occasion; when it was I don't remember.

Q. Did not you and he, on that occasion, leave the house and go together to a bowling-alley on the south side of E street or

1110 Pennsylvania avenue, between 11th and 12th streets, and get a drink there at a bar attached to the bowling-alley?

A. Yes, sir.

Q. While at the bowling-alley, did you not ask Leach if he had

ever had sexual intercourse with Kate Conley, or language meaning that, and did Leach not evade your question, and not give you a direct answer, and did you not thereupon say to him to go back to the house with you and you would show him what you could do, or language to that effect, and did not you and Leach then go back to Kate Conley's house, and did you not, in the presence of Leach, put one of your hands on Kate Conley's neck or
1111 shoulder and the other one up under her clothes, and did not Kate Conley tell you to stop, or language to that effect?

(Objected to by Mr. Carrington.)

A. That is false, every word of it, and not only false, but, with respect to you gentlemen, it is a damned lie, if you heard so. I did meet him, and went to the bowling alley, and, I think, went back with him; but I deny the conversation at the bowling-alley and the occurrence at the house.

Q. Have you ever stayed in Kate Conley's house all night?

A. I have not; never.

Q. What is the latest that you ever stayed there at night at any time?

A. I never stayed there at night at any time, except on one occasion, when I took my little boy there. I wanted him to
1112 stay all night while I was at the market, but he would not consent to stay, and I took him back to the market; I don't remember the hour.

Q. Have you not taken meals with Conley sometimes at her house on 12th street?

A. I have eaten there.

Q. How frequently since the death of Mr. Nailor?

A. I don't remember; not very often, though; not more frequently than during his life, I reckon.

Q. Have you not, since the death of Mr. Nailor, taken meals with Kate Conley in a private room in her house, with her alone, and did she not on those occasions refuse to allow any one else to come into the room?

A. No, sir; I have taken meals with her in the dining-room. I never knew any one else to be forbid to come in.

1113 Q. Do you know a woman by the name of Ellen Horn?

A. I know a woman they call Mrs. Horn.

Q. Did you ever see her at Conley's since Mr. Nailor's death?

A. I have.

Q. Since the death of Mr. Nailor, have not you and Kate Conley, on several occasions, been in a private room by yourselves, in the house she occupies on 12th street, and have you not stayed with her in such room, sometimes for hours, with the door locked?

A. No, sir; it so happened that we had a little business, and have been in a room to ourselves, but as far as the door being locked or any one forbid to come in, I never heard it.

1114 Q. What business were you transacting when in the room by yourselves?

A. I don't know that I could cite any particular business; some-

times she might want [to] talk something about this case; sometimes no business at all; but it may frequently happen that two people may be in a room to themselves in a house where there are only two or three people.

Q. Have you talked and counselled with her much about this case?

A. No, sir; very little; or with any one else.

Q. Has Kate Conley made you or your wife a present of a set furniture since the institution of this suit, or at any other time?

A. That was between she and my wife, a transaction I knew nothing about until I was notified to haul it up; I refused to
1115 take it up, as I supposed it was a present; and she said I had nothing to do with that, as it was between Mrs. Bean and myself, and insisted upon my taking it up, and I did take it up, a set of furniture.

WM. F. BEANS.

Subscribed and sworn to before me this 22nd day of March, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until March 24, at 3 o'clock p. m.

MARCH 24, 1880.

Met pursuant to adjournment.

Present: Messrs. Rutherford and Carrington, Jr., and Thompson, for defendant, and C. C. Cole, Esq., for complainants; whereupon, the witness not appearing, the taking of testimony is adjourned until March 25, 1880, at 3 o'clock p. m.

1116 MARCH 25, 1880.

Met pursuant to adjournment; but, in consequence of non-attendance of witnesses, adjourned until March 26, at 3 p. m.

Deposition of John Hughes for Defendant. (*Filed Jan.* 14, 1881.)

MARCH 26, 1880.

Met pursuant to adjournment.

Present: E. C. Carrington, Jr., Charles Thompson, Jr., and Gen'l Allan Rutherford, for defendant, and C. C. Cole, Esq., for complainants; whereupon JOHN HUGHES, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Gen'l RUTHERFORD:

1117 Q. State if you knew Allison Nailor, Sr., in his lifetime, how long you were acquainted with him, and how intimately.

A. I did know Allison Nailor, Sr., in his lifetime; I was acquainted with him for twenty-five or twenty-six years. I had a liking for the old gentleman, and he seemed to like me; we were on quite intimate terms.

Q. Where do you reside?
A. 103 High street, Georgetown, D. C.
Q. How long have you resided in this District?
A. I came here in 1851 or 1852.
Q. How frequently did you see Mr. Nailor during the last four or five years of his life?
A. Sometimes I would see him once or twice a day for a week, if the weather was fine, and then again I wouldn't see him for a period of time, being away from the city myself.
Q. Did you have any business transactions with him during
1118 the last four or five years of his life?
A. Well, no, except he would come where I was; I was employed in a house on E street, and he used to come there.
Q. From your acquaintance with Mr. Nailor what is your opinion as to his capacity as a business man?
A. I think he was a shrewd, smart man.
Q. What conversations, if any, did you have with Mr. Nailor in reference to Kate Conley and her children?
A. I very seldom ever talked to him on the matter, but he has told me that that house on 14th street was Kate's. There seemed to be a feud between him and his sons; he would be telling me about it, but I paid very little attention. About the little
1119 boy Willie he seemed to be very affectionate towards him—seemed to take a delight in everything he would do, talking about how smart he was. The last time I saw Mr. Nailor I was standing in a grocery store on 13½ street, and he came up and shook hands with me, and invited me to take a walk with him. We got to talking and he told me about his little boy Willie, who had died, and he seemed very much affected by it.
Q. In any conversation you had with Mr. Nailor did he ever refer to Kate Conley; and, if so, in what terms?
A. He talked always in the highest terms of her. I disremember his exact words. He spoke kindly of her.
Q. Did Mr. Nailor, in any of these conversations, state what
1120 disposition he had made or proposed making of his property with reference to Kate Conley or any of his children?
A. I disremember that, but I have often heard him say about that house on 14th street that the parties had to go to her and rent it of her.
Q. How frequently did you see Mr. Nailor during the last two or three years of his life?
A. Sometimes I would see him once or twice a day, and I wouldn't see him again for twelve months, perhaps longer than that.
Q. On the occasion when you did see him what was his condition?
A. Sometimes he would be sober, and sometimes a little tight.
Q. Was he in the habit of having the little boy Willie with him when you saw him?
1121 A. Yes, sir.
Q. Did you ever visit him at the house where he resided?
A. No, sir.

Adjourned until Monday next at 2.30 p. m.

MONDAY, *March* 29, 1880.

Met pursuant to adjournment; but, in consequence of non-attendance of witness, adjourned until to-morrow, same hour.

Deposition of George M. Grubb for Defendant. (*Filed Jan.* 14, 1881.)

TUESDAY, *March* 30, 1880.

Met pursuant to adjournment.

Present: E. C. Carrington, Jr., for defendant, and C. C. Cole, Esq. for complainants; whereupon GEORGE M. GRUBB, a witness,
1122 of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON, Jr.:

Q. Where do you live?
A. 434 11th street northwest.
Q. How long have you lived there?
A. Four or five months.
Q. How long have you lived in Washington?
A. Off and on for forty-three years.
Q. What is your occupation?
A. Bricklayer.
Q. Did you know Allison Nailor, Sr., in his lifetime?
A. Yes, sir.
Q. How well did you know him?
A. I have been personally acquainted with him for the last thirty years, and always regarded him as a very nice man, as far as I had any dealings with him.

Q. Did you ever do any work for him; and, if so, what?
1123 A. Yes, sir; right smart work for him. I have done some jobbing on his property on D street, and put a story on a house on 14th street, for which Miss Conley paid me.
Q. Did you often converse with him?
A. Yes, sir; I hardly missed a week in talking.
Q. On what subjects?
A. On business more than anything else. I always passed the day with him and talked about how business was going, and so on.
Q. What kind of a mind did he have?
A. I always took him to have a good strong mind. I took him to be a very sane man.
Q. Was he or not as keen and shrewd as most men?
A. Yes, sir; very clear in bargaining, I know.

Q. When was the last time you saw him?
1124 A. I couldn't tell precisely; two or three months before he died I met him on the corner of Ohio avenue and 14th street, and talked with him. We talked about building and how it was coming on. He was always a man to talk about that.
Q. Did you notice any change in his mind at that time?
A. Not a bit, sir.
Q. Did you see him during the period you were working for him?
A. Oh, yes, sir; every day.

Q. Did he talk with you about what you were doing?
A. Yes, sir.
Q. Did he seem to understand the kind of work you were doing and how it should be done?
A. Yes, sir.
Q. What would he say about it?
A. He never had no fault to find. He would come up and look at the work and express himself satisfied.
1125 Q. What were his habits as to the use of intoxicating liquor during the period you knew him?
A. Years gone by he used to be a pretty hard drinker, but the last four or five years I didn't see him drink so much.

Cross-examined by Mr. COLE:

Q. State all the work you did for Allison Nailor during the last ten years of his life.
A. I done some jobbing for him on D street, and I put [up] that story for him on 14th street. I know I cut out a frame for him on D street and walled it up, and some other jobbing that I can't state now exactly. I kept no books. He wanted me to do some work on a house on E street, but I didn't have time to do it.
Q. Is that all?
A. That's all I can say.
1126 Q. When did you do the work on D street?
A. I think it was seven or eight years ago.
Q. How long were you engaged in it?
A. I suppose about a day and a half.
Q. When did you do the work on 14th street?
A. That was six or seven years ago; both jobs near the same time.
Q. How long were you engaged in that?
A. Four days. I had two or three hands.
Q. Did you do any other business with Mr. Nailor during the last ten years of his life except the work above specified?
A. No, sir.
Q. You say the last time you saw him before he died he talked about building and how it was coming on; what building was it he was talking about?
1127 A. He had an idea of building some houses up in the First ward, on some lots there.
Q. What did he mean by asking how it was coming on?
A. He just meant whether I had plenty of work to do—busy or not busy. He always asked what building was going on most every time he met me.
Q. He was not engaged in putting up any building at that time, was he?
A. No, sir; not to my knowledge.
Q. How often did you talk with him during the last four years of his life?

A. I used to see him two or three times a week, and sometimes every day, and then, again, I would miss him for a week or two.

Q On an average, as often as once a week?

A. Yes, sir. I believe he was sick for awhile—for three
1128 or four weeks—and I didn't see him. He complained a good deal of the rheumatism to me.

Q. Wasn't he always complaining of his health when you saw him?

A. Not at all times.

Q. Did he frequently?

A. No, sir.

Q. Did he seem to be well and hale and hearty as any man?

A. No; he didn't appear that way to me.

Q. How did he appear?

A. At times he appeared to be sickly; sometimes he seemed right well.

Q. Did he do anything or engage in any business during the last seven or eight years of his life?

A. Not to my knowledge.

Q. How was it when you first knew him; was he not then actively engaged in business all the time?

A. Yes, sir; in the livery-stable business.

1129 Q. About when did the change take place in his business habits?

A. That I can't tell.

Q. Did you notice any other change in Mr. Nailor, except in his business habits, from what he was when you first knew him?

A. No, sir.

Q. No change in his personal appearance?

A. No, sir; no more than age.

Q. Did you ever see him intoxicated or under the influence of liquor to any extent during the last of his life?

A. No, sir; only once, I think, in the last six years.

Q. He was always sober and strong and right when you saw him?

A. I never saw him drunk for the last four or five years.

Q. How far did you live from him?

1130 A. About — quarter of a mile, I reckon. It was always in his way to meet me going to or coming from home.

Q. Do you know Catherine Conley?

A. I don't know what her first name is; I know the one Mr. Nailor used to live with.

Q. Have you done any work for her since Mr. Nailor died?

A. No, sir.

Q. Have you seen her since he died?

A. Twice; she was at the house day before yesterday; that was the second time I had seen her.

Q. Had any business of any kind with her?

A. No, sir.

Re-examined by Mr. CARRINGTON:

Q. You said in your cross-examination that Mr. Nailor had an idea of building some houses; what causes you to state that?

A. He was talking about it. He said he had some lots up
1131 there and thought he would improve them by building on them. That is what I took it to be.

Q. Did he say why he wished to improve them?

A. No, sir.

GEORGE M. GRUBB.

Subscribed and sworn to before me this 30th day of March, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until March 31st, 1880, at 3 p. m.

WEDNESDAY, *March* 31, 1880.

Met pursuant to adjournment.

Present: Gen'l Rutherford and E. C. Carrington, Jr., for defendant, and C. C. Cole, Esq., for complainants; but, no witness appearing, adjourned until to-morrow at same hour.

APRIL 1, 1880.

Met pursuant to adjournment.

1132 Present: Gen'l Rutherford, for defendant, and C. C. Cole, Esq., for complainants. No witness appearing, adjourned until April 2, 1880, same hour.

Deposition of Frederick Reh for Defendant. (*Filed Jan.* 14, 1881.)

FRIDAY, *April* 2, 1880.

Met pursuant to adjournment.

Present: Gen'l Rutherford, for defendant, and Mr. Cole, for complainants; whereupon FREDERICK REH, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Gen'l RUTHERFORD:

Q. State how long you have resided in Washington.

A. Since 1862.

1133 Q. Where do you now live, and how long have you lived there?

A. 310 12th street northwest. I have lived in that house about eleven months. I lived for seven years before that in the house next door to which Kate Conley now lives. I lived about twelve years on 12th street, in different houses.

Q. What is your business?

A. Paperhanger, box-maker, and decorator.

Q. State if you knew Allison Nailor, Sr., in his lifetime.

A. Yes, sir.

Q. How long had you known him?

A. I knew him about twelve years.

Q. Did you ever have any business transactions with him?
A. Yes, sir; I did paperhanging for him a long time.
Q. Where did you do any jobs of work for him or under his directions?
1134 A. The last two jobs were for Miss Kate, on 12th street and 14th street.
Q. Did I understand that previous to that you had ever done any work for Mr. Nailor himself?
A. Mr. Nailor came to my house with a carriage, and told me you come up; I want some paper in my house; Miss Kate wants to see you. I was up there and she gave me the work.
Q. Did you ever have any other transactions with Mr. Nailor as to hiring property, or any other business?
A. Yes; I was up there to 14th street, and wanted to collect some money, and then I told him what he wanted for the store on E street—a little store; she told me he was sick, and in a couple of days he comes down to my house in a carriage, and I rented the store from him.
Q. Who paid you for the work you did on the 12th and
1135 14th street house?
A. Miss Kate and Mr. Nailor.
Q. How often did you see Mr. Nailor during the last four or five years of his life?
A. I saw him a good many times.
Q. When you were doing the work in the house on 14th street was Mr. Nailor living in the house?
A. Yes, sir.
Q. How long were you there doing the job in that house?
A. I think about five days; I papered the whole house; I was there every day, but I had my men working there; I didn't stay always all day.
Q. During that time did you see Mr. Nailor every day you were in the house?
A. I think so.
Q. Did you see him with Kate Conley on those occasions?
A. Yes; there in the house.
Q. How did he act towards her, and how did she act towards him; kindly or otherwise?
1136 A. She acted good to him, and he acted good to her; I never heard a bad word.
Q. Can you give the month and year when you did this work on 14th street?
A. I think it was about four years ago; I papered in that house twice; the first time shortly after another story was put on; and I papered there again afterwards, because the paper was injured by the sinking. The second time I was engaged there about two days.
Q. Did you ever see Mr. Nailor drunk during the two times you speak of when you were in the house?
A. No.

Q. Do you know what Mr. Nailor's reputation was as an intelligent business man?

A. I think he was a smart business man. On two occa-
1137 sions, several years ago, I had to sue him before Squire Clark for money he owed me for paper-hanging in houses; I got judgment against him, and he paid me, and afterwards gave me his hand as good friends.

Q. Do I understand that for the last seven or eight years of Mr. Nailor's life you lived within a few doors of where he was living on 12th street?

A. Yes, sir.

Q. Are you acquainted with Catharine Conley?

A. Yes, sir.

Q. Do you know her general reputation in the neighborhood?

A. I don't know what you mean by that.

Q. Was she regarded as a respectable woman?

(Objected to by Mr. Cole.)

A. Yes, sir.

Q. Do your family know her?

A. Yes, sir.

Cross-examined by Mr. COLE:

1138 Q. How do you know that Kate Conley was regarded as a respectable person?

A. Every time I saw her she was respectable.

Q. Who did you ever hear say she was respectable?

A. When I was in the house and worked there, and when I was in the house and collected the money.

Q. Did you consider her respectable?

A. I cannot tell that.

Q. Did you know she was living with Mr. Nailor without being married to him?

A. I cannot tell. Some people said she was married to Mr. Nailor and some said she was not. The last time I got notice that she was not married.

Q. Who gave you that notice?

A. When Mr. Nailor spoke to me he said he had something to do, and then he spoke and said Miss Kate.

1139 Q. Did Mr. Nailor tell you he was not married to her?

A. No.

Q. How did you find it out?

A. By his talking to me—Miss Katie. When a man comes to me about doing work he says my wife, but Mr. Nailor said Miss Katie.

Q. How did you know who Miss Kate was?

A. She was in the house on 14th street.

Q. When Mr. Nailor came to you and said Miss Kate wanted to see you, how did you find out who he meant by Miss Kate?

A. He said you come up; she has got some work—some paper-hanging.

Q. Have you done any work for Kate since Mr. Nailor died?

A. No.
Q. What did you sue old man Nailor for?
A. Money.
Q. What did you want his money for?
A. Paper-hanging.
1140 Q. How many times did you sue him?
A. One or two times.
Q. I thought you said he and Miss Kate paid you for paper-hanging?
A. Yes, sir.
Q. Then why did you sue him?
A. Oh, that was before, a long time before; that was not for this.
Q. Well, then, for the first you did for them he paid you and for the last he did not, and so you sued him?
A. Oh, no; that was before, for papering on D street, that I sued him; for the house on 14th street I was paid by Miss Kate in cash some and the balance I took out in rent of a store from Mr. Nailor.
Q. About when was it you sued him?
A. I think from eight to ten years ago.
Q. Then you sued him for the first work you did for him?
1141 A. I worked some for him and he paid me. For that work I sued him, yes.
Q. Did he make any defense to the suits?
A. No; he paid me and it was all right.
Q. Did you have a trial before the justice?
A. No; I was first with Squire Clark.
Q. Did you see Mr. Nailor there before Squire Clark?
A. Yes.
Q. What objection did he make to paying you there before the justice decided that he must pay you?
A. I gave Mr. Nailor the bills for a long time and then I sued him, and that was all.
Q. Why do you think Mr. Nailor was a very smart business man?
A. Well, Mr. Nailor was to the house and I rented the store from him, and he wanted $30, and I offered him $20, and then the next time I got it for $15.

F. REH.

1142 Subscribed and sworn to before me this 2nd day of April, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until April 6, 1880, at 3 o'clock p. m.

Deposition of Irving W. Archer for Defendant. (*Filed Jan.* 14, 1881.)

APRIL 6, 1880.

Met pursuant to adjournment.
Present: Gen'l Rutherford and Mr. Carrington, Jr., for defendant, and Mr. Cole for complainants; whereupon IRVING W. ARCHER, a

witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON:

Q. Where do you live and what is your occupation?

1143 A. 1375 Ohio avenue, Washington, D. C.; I am a carpenter.

Q. Did you know Allison Nailor, Sr., during his lifetime?

A. I did.

Q. How intimately did you know him?

A. I was personally acquainted with him.

Q. How frequently did you see him?

A. Sometimes two or three times a week and then again not for two or three months.

Q. Did you ever do any work on the house on 14th street where he resided?

A. I put up a front fence there. I worked for nearly a year in the neighborhood on some buildings for John Pettibone. Three (3) of these houses were right across the street from Mr. Nailor's house.

Q. Did you see him often then?

A. I saw him very frequently then. I would see him on an average three times a week.

Q. Did you talk with him then?

1144 A. I used to go over there very often at noon and talk with him; he would be sitting there on the porch.

Q. What would he talk about?

A. He would talk about the difference between the structures of this day and when he was a young man. He claimed that they were much frailer in these days; that in old times they use- to frame everything together. The principal part of his conversation with me was about building matters.

Q. Explain to us how he would point out the difference.

A. In the first place, he would say they used to frame the corner posts into the building, and frame a brace at right angles to that, and now they nailed the corner post and put in a purloin to carry the joist. Then he would go to work and explain the length

1145 and cut of that brace, which is a very difficult thing to do, and you won't find one out of every ten mechanics to-day that can do it; and he would speak of other things of that nature.

Q. What was his mental condition at that time?

A. I think it was all right. I never saw anything wrong about his mental faculties. He often asked me for estimates on work. I never done any work for him, but I gave him estimates, and he wanted an itemized account of everything in making out the estimates, how much material and what it would cost. Usually in making out the estimates, how much material and what it would cost—usually in making out an estimate we only make out the estimate of how much the job is worth to do it, not mention-

1146 ing any material at all. I considered him extraordinarily shrewd and intelligent.

Q. When was it that you were building these houses opposite his residence?

A. In 1878; I think I commenced in April, 1878; I was working over there when Mr. Nailor moved to 12th street.

Q. When was the last time you saw him?

A. The last day he was out of the house, I think.

Q. Did you talk with him then?

A. Yes; he said he had started to go home and turned back to get something for breakfast; he said he was feeling very bad.

Q. When was the time you made the last estimate for him?

A. It was on the 12th-street house, when they were fixing it up to move; it was in 1878.

1147 Q. Did he demand an itemized bill?

A. Yes; in that case he said he was acting as agent. I asked him about another estimate I had given him on some other work, which had been given to some one else, and he gave as a reason for wanting the estimate made in that shape—itemized—that he was acting as agent. I think Mr. Nailor was a coach-maker by trade; he was a worker in hard wood, and I think he served an apprenticeship as a carpenter.

Q. What makes you think that?

A. I think he told me that; he said when he was an apprentice he got eight cents a day, and I think he said he served his time as a house carpenter.

Q. Did he seem to understand your business?

A. Oh, yes.

Q. Thoroughly or otherwise?

1148 A. Oh, he was a practical mechanic; there is no question in my mind about that.

Q. What advantages was he to derive, if any, from requiring you to make an itemized statement with your bid for the work?

A. The advantages that he could give the job to a person who was incompetent to figure out the material, and he wouldn't have the bother of doing it himself. There are a good many mechanics who can't figure up how much material will be required, still they can do the work.

Q. Would it not give him also an advantage over other mechanics with less knowledge of the business than yourself?

1149 A. It would give him the advantage over all mechanics, because he would know how much material was necessary to put up the building, and he could go and find out how much it would cost, and so could know just how much the labor would cost.

Cross-examined by Capt. COLE:

Q. How old are you?

A. Thirty-four.

Q. How long did you know Mr. Naylor?

A. About ten years, I should judge.

Q. You did not see him frequently until the last two or three years of his life?

A. No, sir.

Q. How frequently did you see him then?

A. I saw him sometimes two or three times a week and then it would be a month before I saw him again.

Q. When did you do the work on the 14th-street house?

A. I built a front fence there, I think, in 1877.

1150 Q. Who employed you to do that?

A. Miss Conley.

Q. Who paid you?

A. Miss Conley.

Q. How?

A. In cash.

Q. All at one time?

A. In two payments.

Q. Give her a receipt for it?

A. I did.

Q. Talk with Mr. Nailor any at that time?

A. Yes; he was there most of the time about the house.

Q. What was he doing?

A. Passed in and out. I was not in the house.

Q. What business was Mr. Nailor engaged in during the time you knew him?

A. I don't know that he was in any business; he was passing to and from the stables. I often saw him at the stables.

Q. Are you a married man?

A. I am.

Q. How long have you been married?

1151 A. About seven years.

Q. Did your wife live at Kate Conley's before you married her?

A. She lived there when she was a small girl for a little while.

Q. Please state just how long ago you were married.

A. I was married in 1874.

Q. What time in the year?

A. November 17th.

Q. How long before you were married did your wife live with Kate Conley?

A. I don't know; it must have been three or four years. She was living with her mother when I first knew her.

Q. Did she live with Kate Conley after Mr. Nailor went to live with Kate Conley?

A. She stayed there two months or six weeks to my knowledge.

Q. Does Kate Conley visit your wife?

1152 A. She has been to the house two or three times.

Q. Does your wife visit Kate Conley?

A. Not that I know of. She may for all I know.

Q. Do you visit Kate Conley?

A. I have been there once, I suppose, in the last four months; perhaps twice.

Q. How was it before that?

A. Soon after Mr. Nailor dies I went there very frequently.

Q. What occasion had you to go?

A. No particular occasion. I went there on friendly terms, that's all.

Q. Very frequently?

A. No.

Q. How often?

A. May be once a week; sometimes once in three weeks. I took no particular notice of the times.

Q. Anybody go with you?

A. No, sir.

Q. What did you do when you were there?

A. Didn't do anything.

1153 Q. Didn't you talk *about* Conley about the property involved in this case?

A. I have talked to her about the property and about the suit.

Q. Did you look over the papers with her and advise her about her rights in the property?

A. I don't remember reading any papers. I assorted some papers there for her once.

Q. How did you happen to do that?

A. I was asked to do it.

Q. Did you look at any deeds?

A. I think there were some deeds among the papers.

Q. Did you read them?

A. I don't think I did. I think those papers were done up in packages and marked on the back. I don't think I opened them, but am not positive.

Q. What made you think that Mr. Nailor's mind was all

1154 right?

A. I had no reason to think any other way. I never saw anything out of the way with him.

Q. Is that all the reason?

A. That's all. Ain't that enough?

Q. Did he seem to like to talk about building?

A. He always did to me; that is the principal thing he talked about to me.

Q. He went a good deal into the details, and explained a good deal about it?

A. Yes, sir.

Q. Talked a good deal about building new buildings himself, did he not?

A. He said he had built a great many houses.

Q. Did he talk about building more in the future?

A. I don't know that he ever spoke of building more.

Q. Did he not request you to make estimates and proposals to him for buildings?

1155 A. He did, several times.

Q. Where were those buildings to be erected?

A. I think the first job he spoke to me about was a house on G street; in the first place, he asked me what it would cost to repair it—it was a frame structure—and then changed his mind, and was

speaking about tearing it down and removing it to the country and putting it up on one of the farms.

Q. Where else did he propose to build?

A. I gave him an estimate on the house on 12th street, between D and C.

Q. Did you build a house there?

A. No, sir; they wasn't to build; to repair; I didn't get either job; somebody did repair on 12th street.

Q. Did he ever get you to make any estimates for building?

1156 A. No, sir.

Q. How did Mr. Nailor act and appear in the spring of 1878, when you were doing work on the 14th-street houses?

A. He acted all straight enough, rational enough, as far as I saw, except being feeble.

Q. Did he stay in the house a good deal?

A. I think he did; he was generally there about twelve o'clock; I often saw him when he would be sitting outside.

Q. Did he walk around much?

A. I very seldom saw him walking up to the house; he generally had a buggy there.

Q. Whenever he left the house he rode in a buggy?

A. Yes; I generally saw him riding in the buggy.

Q. Did he generally ride alone or somebody with him?

A. Most of the time alone; sometimes he had a little boy with him.

1157 Q. What months were you working on those houses?

A. I went there in April, and worked a year in that one square; three houses on 14th, three on B, and eight on 13½ street.

Q. How often did you talk with Mr. Nailor during the time you were working on those houses?

A. Two or three times a week, perhaps, say twice; whenever it was pleasant enough for him to be out.

Q. And generally talked about the building?

A. Yes, sir.

Q. Was not your wife living at Kate Conley's first before you married her?

A. She was stopping there, as I told you a few minutes ago; she left here with her mother and went to Philadelphia, and when she came back stopped there until I married her.

1158 Q. How long had she been staying there continuously before you married her?

A. I think six weeks or two months, as far as I can recollect.

Q. Were you married at the house where Kate Conley was living?

A. No, sir.

Q. Are you not known and sometimes called by some name other and different from the one you have given to-day?

A. None that I have ever heard of. I have been here since 1867.

Q. And never been known by any other name?

A. Not that I ever heard; I never answered to any other in my life.

IRVING W. ARCHER.

Subscribed and sworn to before me this 6th day of April, 1880.
IRVING WILLIAMSON,
Examiner in Chancery.

1159 *Deposition of William Ware for Defendant.* (*Filed Jan.* 14, 1880.)

Whereupon WILLIAM WARE, a witness of lawful age, produced, sworn, and examined by and in behalf of the deponent, deposes and says as follows:

By Gen'l RUTHERFORD:

Q. Give your residence and occupation.
A. Green's alley, between 13th and 14th, Washington, D. C.; I am a carpenter.
Q. How long have you lived in Washington?
A. Since 1862.
Q. Did you know Allison Nailor, Sr.?
A. Yes, sir.
Q. How long had you known him?
A. I have been acquainted with him since 1874.
Q. Did you ever have any business transactions with him?
A. Yes, sir.
Q. State what they were.
1160 A. I repaired a house on 14th street; it was in 1874—July, August, and part of September.
Q. Was the work done under a contract?
A. Yes, sir.
Q. Was the contract with Mr. Nailor or some other person?
A. With Mr. Nailor himself. I got $65 for the job and $20 for extra work afterwards. That is about as much as I had any contract with him.
Q. How long were you employed on the work?
A. I commenced about the 8th of July and finished about the latter part of September—inside of three months.
Q. Was Mr. Nailor living in the house where you were doing this work?
A. At the time he was.
Q. How often did you see him during that time?
A. Sometimes once or twice a day and sometimes more than that.
1161 Q. Did he overlook the work or appear to know anything about it?
A. Yes, sir; he did.
Q. What did he do?
A. He would go around [and] see whether it was done as it ought to be done. If it wasn't done right he would know it.
Q. What appeared to be Mr. Nailor's condition during that time?
A. I didn't see anything the matter with him; he seemed to be in good senses.
Q. Did you ever see him intoxicated?
A. Not while I was there.

Q. Did you ever have any other business with him?
A. I raised a stable and cutting away to put a balcony.
Q. How long were you occupied in that work; or is it included in the three months?
A. All in the three months.
Q. Who paid you for these jobs?
A. Mr. Nailor paid me himself.

1162 Cross-examined by Capt. COLE:

Q. William, was not Mr. Nailor crazy?
A. No, sir; not that I know of.
Q. Who told you he was not crazy?
A. That was from his talk and his actions.
Q. Didn't somebody tell you he was not crazy?
A. No, sir.
Q. Certain?
A. I am.
Q. Never at any time?
A. No, sir.
Q. Then how do you know he was not crazy?
A. Well, I have got judgment enough myself to know whether a man is crazy or not?
Q. Now, how did he talk when he convinced you that he was not crazy?
A. Well, by telling me how he wanted the work done, and knowing when it wasn't done right and when it was done right.

1163 Q. Did he know when work was done right?
A. Yes, sir.
Q. How do you know that?
A. Because I know when I did it right he was satisfied, and when I didn't do it right he would speak about it.
Q. Did Mr. Nailor ever find fault with any work you did for him?
A. No, sir; he found fault with a man I had helping me out. One day I was away and the man did something wrong and he stopped him until I came.
Q. But he was always satisfied with what you did?
A. Yes, sir.
Q. And because he was you say he was not crazy?
A. Well, if he was crazy, he was in good senses every time he talked to me.
Q. Now, tell us how you know he was in good senses every time he talked with you?

1164 A. Because he always talked what was right and knowed what was right.
Q. How do you know?
A. Because I believe I would know a crazy man from one that is not crazy.
Q. But you say that he talked what was right and knew what was right; how do you know that he knew what was right?
A. Because I knew what I was doing, and if I done it right he was satisfied, and if I didn't do it right he was not satisfied.

Q. He was just as smart as any man?
A. That's all the evidence I have got to believe that he wasn't crazy.
Q. Well, then, he may have been crazy so far as you knew?
A. I don't believe he was.
Q. Who told you to come here and testify?
1165 A. Miss Kate Conley asked me to come here and tell what was right, and I haven't told anything that wasn't right.
Q. Did she seem to be fearful that you might tell something that wasn't right?
A. I don't know.
Q. But she cautioned you particularly not to tell anything that wasn't right?
A. She asked me to come here and state the time I worked for Mr. Nailor and tell just what I knew about it.
Q. But you say she told you not to say anything that wasn't right. Is that true?
A. But what was right; she told me that.
Q. When did you see her last?
A. Yesterday evening.
Q. Where?
A. I met her between here and the corner when I went from here.
Q. Were you here last evening?
A. Yes, sir.
1166 Q. How did you happen to come here?
A. She asked me to come before that.
Q. When did she ask you to come?
A. Saturday, I think; she was up to my house and left word there.
Q. Did you ever talk with Mr. Nailor any after you did this work for him?
A. I didn't see him afterwards any more. He went away before I finished to the Springs.
Q. Then you never saw him after you got through with the work?
A. No, sir.
Q. Where were you raised?
A. I was raised in Westmoreland county, Virginia.
Q. Were you a slave?
A. Yes, sir.
Q. When did you come to Washington?
A. In 1862.
Q. Been here ever since?
1167 A. Only what time I was in the army.
Q. How long were you in the army?
A. From 1863 to 1865.
Q. Have you ever been in jail or in the penitentiary?
A. Never was arrested in my life.

Re-examined by Gen'l RUTHERFORD:

Q. You wouldn't think Capt. Cole here was crazy, would you?
A. No, sir.
Q. Does Capt. Cole talk as intelligently as Mr. Nailor used to talk?
A. Well, about the same. *Nare* one didn't talk very crazy.

WILLIAM WARE.

Subscribed and sworn to before me this 6th day of April, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until April 8th, 1880, at 3 o'clock p. m.

1168 *Deposition of Daniel McGuigan for Defendant.* (*Filed Jan.* 14, 1880.)

THURSDAY, *April* 8, 1880.

Met pursuant to adjournment.

Present: Mr. Carrington and Gen'l Rutherford, for defendant, and Mr. Cole, for complainant; whereupon DANIEL MCGUIGAN, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON:

Q. Where do you reside?
A. On the corner of 7th and I streets southwest, Washington, D. C.
Q. How long have you lived in Washington?
A. I suppose near about twenty years.
Q. What is your business or occupation?
A. I have worked the greater part of that time in the car stables.

1169 Q. Did you know Allison Nailor, Sr.?
A. Yes, sir; I was pretty well acquainted with him. For eight or ten months I lived in the house with him. I knew him in all five or six years.
Q. Did you see him frequently?
A. I did. I went to see him after I moved away from the house in which he was living.
Q. Did you converse with him often?
A. Yes, sir; whenever I went there he was glad to see me. If I had any particular business on hand I generally acquainted him with it and asked his advice on it.
Q. How would he advise you?
A. He advised me in any way, which I always found to come out right. When I took his advice I never went astray, so far as I was acquainted.
Q. What subjects would you converse upon?

A. We have talked of many things. I very often went
1170 out with him in his buggy when he was sickly. He would sometimes show me parts of his property. I have been out in the country with him and seen some of the property there.

Q. Give me some idea of the subjects you would discuss.

A. We have sometimes been talking of his own family matters, and I have advised him to go home to his own family. He told me that his own family didn't treat him right when he was with them. It would be difficult for me to tell all the matters we talked about.

Q. What was the condition of his mind during the time you knew him?

A. I never saw anything wrong in his mind during the time I knew him. I have seen him at different times under the in-
1171 fluence of liquor. I have seen him coming home under the influence of liquor, but never at home or going away from home. I found him as clever a man as I ever talked with.

Q. What do you mean by clever?

A. I mean sharp in business.

Q. When was the last time you saw him?

A. About two months before his death. I went over to see him.

Q. Did you talk with him then?

A. Yes, sir; nothing particular; how he was and so on.

Q. How long were you talking with him at that time?

A. I couldn't say exactly, not more than an hour on that visit, I suppose.

Q. Did you see any difference in his mental condition at that time as compared with what it was formerly?

A. No, sir.

Q. How often did you see him during the year 1878?
1172 A. That I couldn't say.

Q. How often, according to your best recollection?

A. Once in two weeks or once a month. I couldn't exactly say.

Cross-examined by Mr. COLE:

Q. Where were you born?

A. I was born in Ireland.

Q. What do you do at the car stables?

A. Only a laborer; work in the stables generally.

Q. What sort of work?

A. I am a watchman at present. I have formerly been a hostler in the stables.

Q. What makes you think that Mr. Nailor's mind was all right while you knew him?

A. I have never been in conversation with him or asked him any advice, but I found him to be right in what he advised me to do.

Q. Who told you he was right in his mind?
1173 A. I can't say any one told me; I never had any idea he was wrong in his mind.

Q. Was he always well and healthy?

A. No, sir; he was in a delicate state of health, complaining pretty often of chills and so on.

Q. How long before his death was he in this condition?

A. Well he has been pretty much in this way from the time I first knew him, and that's been five or six years or better.

Q. Was he spry and active?

A. In the line of business, so far as I ever troubled him, he was.

Q. Why do you say he was spry and active in the line of business?

A. In any advice I have asked him of any little trouble I had on hand he was always clever to give me advice, and I always found it to come right.

1174,5 Q. What business did you ever know him to do?

A. In particular, I had law business in raising an infant child, and his advice in that came very correct to my view.

Q. He was your lawyer?

A. Mr. Hine, Mr. Nailor was not my lawyer, but he advised me; I had a lawyer previous to him.

Q. That's what you think he was active in business?

A. I do, so far as I am acquainted with it.

Q. How far are you acquainted with it?

A. I always found his advice, that when I came to do it, I always found it as he said I would have to do.

Q. Now tell us one thing that he told you to do, and how he told you to do it.

A. He told me take that case out of that lawyer's hands
1176 that had it. I didn't do it, and the case stands so as yet and nothing further done with it.

Q. So you think that was a wise suggestion?

A. I think now it was.

Q. Did you think so at the time?

A. I did not then.

Q. Then you did not have confidence in his judgment at that time?

A. I am well satisfied that if I had taken his advice at that time, at least I expect I would have been better off.

Q. Did you have confidence in his judgment at the time he told you to take that case out of the lawyer's hands?

A. Well, at that time I couldn't exactly know which was best to do.

(Mr. Cole objects to the answer as not responsive to the question, and the question is repeated and an answer of yes or no insisted upon.)

Q. Question repeated.

1177 A. Well, I would suppose I had confidence in him, but as to advising me whether it was right, I didn't know. I couldn't answer that any straighter, to my knowledge.

Q. If you had confidence in him, why didn't you adopt his suggestion and advice?

A. Well, it seems I hadn't done it.

Q. What case is that?

A. It is the case of raising of an infant child.

Q. In what court is it?
A. Orphans' court, I believe.
Q. Who are the parties to it?
A. I don't understand.
Q. Did somebody sue you, or did you sue somebody, in reference to the child or its property?
A. My wife sued the child's mother.
Q. That case is still pending?
A. Yes, sir.
Q. What did she sue her for?
1178 A. One thousand dollars.
Q. Who is the lawyer?
A. Mr. Hine.
Q. What was the $1,000 for?
A. For the support of the child during the time I had it.
Q. What other things did Mr. Nailor advise you to do?
A. That was pretty much all the business I had with him that way—law business.
Q. Did he ever advise you about anything except law business?
A. Nothing particular.
Q. And you concluded from that advice that his mind was all right, and that he was sharp and smart in business?
A. I have concluded from seeing him many times and talking with him. I always found him smart in business, as I thought.
Q. What other things?
A. Many things we were talking of. I couldn't recollect
1179 all we talked about times ago like that.
Q. Mention one.
A. Talking about board of public works often when we were together.
Q. Talked about that a good deal, didn't he?
A. Sometimes he did.
Q. Who is the mother of this child you speak of?
A. Mrs. Johnson.
Q. Who is its father?
A. That's something hard to put to me, sir.
Q. Is Mrs. Johnson a married woman?
A. She is dead. She was a married woman, as far as I knew.
Q. When did she die?
A. I can't exactly say; about four or five years she has been dead.
Q. Did she die before or after the suit was brought?
A. After the suit was brought. She gave notes for the
1180 $1,000 before she died. I don't remember exactly whether they were given before or after the suit was brought. I don't exactly understand the question as to that.
Q. Have the notes been paid?
A. No, sir.
Q. Why not?
A. I don't know.
Q. Was that what you sued her for, because she didn't pay the notes?

A. Gentleman, that case doesn't belong here, I think. Is it for that I came here? I am not prepared for it.

Q. How do you know that Mrs. Johnson was the mother of the child?

A. I am not obliged to answer such questions.

Q. Do you know it?

A. That I don't know.

Q. How often did you ever see Mr. Nailor intoxicated?

A. Many times, indeed.

Q. Considerably intoxicated?

A. Yes.

1181. Q. Did you ever see him in the presence of Kate Conley?

A. I did, often.

Q. Ever see him drink in the house?

A. I have, occasionally.

Q. Who fixed it for him?

A. He has pretty often fixed it himself. I have seen her fix it for him, too.

Q. Did you ever drink with him at his house?

A. I don't recollect — I ever did. I have drank with him outside of his house, but I never recollect in.

Q. How did Kate seem to use him?

A. She used him very friendly, as well as I see. I thought she was very kind to him.

Q. What did she do for him that seemed to be kind?

A. She seemed to be kind in giving him his victuals, putting clean clothes on him when he was going out, and such as that.

1182 Q. How long have you known Kate?

A. I suppose it will be fifteen years since I first seen her.

Q. What part of Ireland are you from?

A. County Antrim.

Q. How far is that from the county Galway?

A. That I couldn't say; it is a good distance. I have never been there.

Q. Did Kate have any money or property when you first knew her?

A. Not that I knew of.

Q. What was she doing when you first knew her?

A. I believe she was in service when I first knew her.

Q. Where?

A. I couldn't say.

Q. Did you know of her being in jail for larceny?

A. No, sir; I never did.

Q. Did you ever hear of it?

A. I don't believe I ever did.

1183 Q. What did you ever hear Kate Conley say about Mr. Nailor's making a will or deeds in favor of her and her children?

A. It was very little I ever did hear her say in regard to that, but I did hear her say he had made a will and deeds to her children and to her.

Q. When did she say that?

A. I would suppose it is a month ago, perhaps more, since she was telling me.

Q. Did you ever hear her say anything about it before Mr. Nailor died?

A. I did. I heard her making a remark simply that he had left something to her and the children, but what she didn't say, and I didn't make any inquiry.

Q. How long was that before Mr. Nailor died?

A. I couldn't exactly say; it was before they left 14th street.

1184 Q. Have you been in the habit of visiting Kate Conley since Mr. Nailor died?

A. I believe I have been there three times to see her.

Q. Did you know Kate was not married to Mr. Nailor?

A. I did; at least I heard so.

his
DANIEL x McGUIGAN.
mark.

Subscribed and sworn to before me this 8th day of April, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Deposition of William Ballenger for Defendant. (*Filed Jan.* 14, 1882.)

WILLIAM BALLENGER, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Gen'l RUTHERFORD:

1185 Q. Give your residence and occupation.

A. 210 14th street southwest, Washington, D. C. I am a laborer employed in Government work on the public buildings and grounds.

Q. How long have you lived in Washington?

A. Five years the 8th of March last.

Q. Did you know Allison Nailor, Sr.?

A. Yes, sir.

Q. How long had you known him?

A. I had a slight acquaintance with him for three or four years.

Q. State where you lived and how you came to form his acquaintance.

A. I lived the second door from him on 14th street for about one year. I used to see him passing, and we used to pass the time of day. My wife and myself moved down on 12th street with

1186 Mr. Nailor. We moved there September 23, 1878, and continued to reside there until October 9, 1879. We occupied the third story.

Q. During the period you lived in the same house with him on 12th street did you see him often?

A. I saw him every day; sometimes twice a day.

Q. Did you ever visit in the portion of the house he occupied?

A. Yes, sir; I used to go down in the dining-room and talk with him awhile in the evenings.

Q. Upon what subjects would you generally converse?

A. Well, nothing particular; about farming, stage driving, and work of various kinds.

Q. From your acquaintance with Mr. Nailor and these conversations you had with him, what is your opinion as to his condition and capacity?

1187 A. I think it was very good. He was a man that had his right mind; he was a sensible, clear-headed man; one in a thousand for his age, in my opinion.

Q. Did he appear to be frequently or constantly under the influence of intoxicating liquor?

A. No, sir.

Q. Did you ever see him drink liquor in the house on any occasion you visited there?

A. Yes, sir; he would take his dram occasionally.

Q. What influence did Kate Conley appear to have over him?

A. She didn't appear to have any; she used to talk to him and try to keep him from taking his whiskey. He would tell her he knew what he was about; that he knew his business.

Q. What was his conduct towards Kate Conley and hers towards him?

1188 A. They were kind to each other; there was no harshness or roughness between them.

Cross-examined by Mr. COLE:

Q. How do you know that Kate Conley did not have any influence over Mr. Nailor?

A. I heard her talk to him; he didn't listen to her. He did everything his own way and didn't take any advice.

Q. How often did you ever see them together?

A. That I couldn't say; a good many times.

Q. When did you first become acquainted with Mr. Nailor?

A. About three years ago; somewhere near about that.

Q. How often did you see him from that time on to the time of his death?

A. I couldn't say; every week more or less for a couple of years.

Q. Did you see Kate that often?

A. Yes, sir; I suppose I did.

1189 Q. What makes you think Mr. Nailor had his right mind?

A. I had no right to think any other way.

Q. What right had you to think he had?

A. He didn't act to me, at any time, as if he didn't have his right mind.

Q. What sort of man was he in appearance, health, physical condition generally?

A. He was very good, except weak and feeble like.

Q. How did he appear when he moved, walked about?

A. He appeared to be lame; walked with his cane.

Q. Did he walk an ordinary gait or slowly?
A. A medium gait for a man of his age.
Q. Was he an educated man.
A. I suppose he was; he didn't say anything about his education; I have heard him read a good deal.
1190 Q. Did you ever see him intoxicated?
A. I have, a few times.
Q. Only a few?
A. Only a few.
Q. Say about how many?
A. I couldn't say, for I never taken any account; that is something I don't charge my memory with; I suppose not over half a dozen times.
Q. Was he not under the influence of intoxicating liquors very frequently when he was not precisely what you would call intoxicated?
Q. Yes, sir; he would take his whiskey regularly.
Q. Did you ever see him drink in his house?
A. Yes, sir.
Q. Frequently?
A. No, sir.
Q. Ever see Kate present when he was drinking?
A. Yes, sir.
Q. Ever see her fix it and give it to him?
1191 A. I don't know that I ever did.
Q. Did you ever see her drink?
A. No, sir.
Q. What employment have you on the public grounds?
A. Laboring work on the President's grounds.
Q. How long have you been so engaged?
A. This is the third year at the White House.
Q. Where were you born?
A. In Virginia.
Q. How much rent did you pay while you were in the same house with Mr. Nailor?
A. Didn't pay anything.
Q. How long were you there?
A. About twelve months and a half.
Q. Were you married at the time?
A. I should think I was.
Q. Was your wife with you?
A. Of course.
Q. Have any children at that time?
A. One.
Q. Was that with you?
A. Yes, sir.
1192 Q. Did you and your wife know at that time that Mr. Nailor had a wife living and that he and Conley were not married?
A. Yes, sir.
Q. When did you leave living in the same house with them?

A. October 9th, 1879.
Q. Pay any rent after Mr. Nailor died?
A. No, sir.
Q. Did you ever hear Kate Conley, before the death of Mr. Nailor, say anything about his having made a deed or wills in favor of her and her children?
A. Yes, sir.
Q. What did she say?
A. She said he had made a will and deeds for some property to her and her children. That is all I heard her say.
Q. How long was that before he died?
A. A month or two, I suppose.
1193 Q. Were you about the house much in the daytime?
A. Not a great deal: mostly at work.
Q. How do you know that Mr. Nailor never went away from the house intoxicated?
A. I don't know it, sir. I never seen him go away very often.
Q. Do you know that he never went away from the house intoxicated?
A. No, sir. I couldn't say. I never saw him go away intoxicated, but he may have done it.
Q. Do you know a man called Flay Bean?
A. Yes, sir.
Q. Did you ever see him at the house where Kate Conley now lives?
A. Yes, sir.
Q. Since Mr. Nailor's death?
A. Yes, sir.
Q. About how often?
1194 A. About once a week, sometimes twice a week—when he came to market.
Q. Do you live near where Kate Conley does now?
A. No, sir; not very near. I live on 14th street, between B and C S. W., and she lives on 12th street N. W.
Q. Have you been at her house since you moved away from there?
A. Yes, sir; a few times.
Q. What took you there?
A. I stopped in to see her; nothing particular.
Q. Who went with you?
A. I went by myself, and once or twice my wife was with me.
Q. What time of day or evening or night did Bean come there, and when did he go away, generally?
A. He sometimes *he* would come in the morning, forenoon, or in the afternoon; he would go away the same day.
1195 Q. Ever see him there after night?
A. He has been there just at night, on his way home, while I was there.
Q. Have you ever seen him there since you moved away from the house?
A. No, sir.

Q. Haven't you talked about this case a good deal with Kate Conley?
A. No, sir.
Q. Have you talked any with her about it?
A. No, sir; I never talked with her on the subject at all. It didn't concern me, and I didn't bother myself about it.
Q. Did she never mention the case to you?
A No, sir.
Q. Nor you to her?
A. No, sir.
Q. Who requested you to come here and testify?
A. She did.
Q. When?
1196 A. Some time this winter. I don't recollect exactly the time.
Q. What did she say at that time?
A. She said she wanted me to come up here and state something about the house she kept; something like that; that is all she said.
Q. What did she want you to state about the house she kept?
A. That everything went on quiet and straight about the house, so far as I knowed.
Q. She didn't ask you to state anything about Mr. Nailor?
A. Not particularly; that I thought he wasn't insane, as people said he was.
Q. She asked you to state that he was not insane?
A. Yes, sir; something to that effect.
Q. And didn't she also ask you to state that she didn't have any influence over Mr. Nailor?
A. No, sir.
1197 Q. Is that the only time that you and she ever talked about this case?
A. I think it is.
Q. Were you not here two or three weeks ago to testify in this case?
A. No, sir; I was here in February.
Q. Who requested you to come, then?
A. She did.
Q. Well, didn't you talk with her about the case, then?
A. No, sir; very little; all the talking that was done was done then.
Q. Who asked you to come here to-day?
A. She did.
Q. When?
A. Sent a note over to my house yesterday evening.
Q. Who wrote the note?
A. That's more than I can tell.
Q. Whose name was signed to it?
1198 A. Hers.
Q. Do you know her handwriting?
A. She can't write herself, I don't think.
Q. How did you know it came from her?

A. The person who brought it told me it did.
Q. When did you last see her?
A. I couldn't exactly tell; a couple of weeks ago, I guess.
Q. Who took the note to you last night?

(Objected to by Mr. Carrington.)

A. Some youngster in the neighborhood; I disremember his name.
Q. Did you know the name of the party?
A. Old man Cardrick's son.
Q. Where does he live?
A. He lives on the Island; I don't exactly know where.
Q. A young man?
A. Not exactly; between a boy and a man.

1199 Re-examined by Mr. CARRINGTON:

Q. How old are you?
A. I was fifty the 3rd day of March last.

WM. BALLENGER.

Subscribed and sworn to before me this 8th day of April, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until April 12 at 3 o'clock p. m.

Deposition of George Forrester for Defendant. (*Filed Jan.* 14, 1881.)

APRIL 12, 1880.

Met pursuant to adjournment.
Present: Mr. Carrington, Jr., for defendant, and Mr. Cole, for complainants; whereupon GEORGE FORRESTER, a witness of law-
1200 ful age produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON, Jr.:

Q. Where do you reside?
A. 1210 13th street N. W., Washington, D. C.
Q. How long have you lived in Washington?
A. Thirteen or fourteen years.
Q. What is your occupation?
A. Carpenter.
Q. Did you know Allison Nailor, Sr.?
A. I did.
Q. For how long a time did you know him?
A. Over six or seven years?
Q. When was the last time you saw him?
A. I saw him, I suppose, three or four months previous to his death.
Q. Did you see him frequently or not?
A. I cannot say that I did see him frequently.

Q. Did you converse with him when you saw him; and,
1201 if so, upon what subjects?
A. I did, sir; we got to talking about carpentering work.
Q. Have you ever done any carpenter's work for him?
A. I have.
Q. What did he talk about the last time you saw him?
A. He said he had lost the run of me—lost sight of me—and had had a good deal of work to have done.
Q. How long did you talk with him at that time?
A. I suppose I was in conversation with him ten or fifteen minutes—twenty minutes, perhaps.
Q. What was the condition of his mind during the period you knew him?
A. So far as I am able to judge, he seemed to be perfectly sane—rational—as any other man.
Q. Was there any change in his mental condition the last
1202 time you saw him from what it was when you first knew him?
A. No, sir; none that I could perceive; he talked the same way to me—just as he had heretofore.
Q. How would he compare with other men as to intelligence or shrewdness?
A. I suppose he would compare equally, as far as I could judge.
(Question and answer objected to by Mr. Cole.)

Deposition of James McLaughlin for Defendant. (*Filed Jan.* 14, 1881.)

JAMES MCLAUGHLIN, a witness of lawful age, produced, sworn, and examined by and behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON:

1203 Q. Where do you reside?
A. 2508 G street N. W., Washington, D. C.
Q. How long have you lived in Washington?
A. About twenty-three years.
Q. What business are you engaged in?
A. I keep a store and a coal and wood yard.
Q. Did you know Allison Nailor, Sr.?
A. I knew him.
Q. For how many years were you acquainted with him?
A. Four or five years.
Q. Were you in the habit of conversing with him?
A. Yes, sir; very often
Q. On what subjects?
A. Merely on business matters, the state of the times, property, &c., collecting.
Q. When and where did you see him last?
A. I believe it was at Burk's, on 13th street; I think he
1204 told me he owned that property.
Q. How long was that before his death?

A. I really can't say.

Q. What did you talk about on that occasion?

A. On business, renting houses, collecting rents, &c., to the best of my recollection.

Q. About how long ago was that?

A. About two or three years ago. I can't say certainly as to that. I used to see him often driving around.

Q. What was the condition of his mind during that time?

A. I considered him a very sensible old gentleman.

Q. How would he compare with other men as to mental qualities.

A. As far as I knew, he was as sensible as any other business man of my acquaintance.

(Question and answer objected to by Mr. Cole.)

1205 Cross-examined by Mr. COLE:

Q. Whereabouts on 13th street is Burk's, where you say you saw Mr. Nailor the last time?

A. 13th and ½ and C; I think one square below the avenue. It is a liquor store, and on the lower corner towards the river.

Q. When was that?

A. I don't recollect of the time it was.

Q. About how long ago was it?

A. It might be two or three years ago.

Q. Not more than that?

A. I couldn't say; I didn't take any note of the time, not expecting to be called as to what he said to me.

Q. Was Burk occupying the property at the time?

A. Burk occupied the house at that time and I believe he does still.

Q. And did Mr. Nailor say he owned it?

1206 A. Well, I don't know that he said he owned it, but he said he owned a good deal of property about the town. I think on one occasion he said he owned a farm above Georgetown.

Q. Did he say he owned the Burk property?

A. I think he said to me he owned a good many houses; and I think he said he owned the house on the corner or the one next to it.

Q. How often did you see Mr. Nailor and talk with him during the last five years of his life?

A. As close as I could get to it, about six or seven times; I would meet him on the streets driving around.

Q. Did you talk to him as many as six or seven times during the last five years of his life?

1207 A. I think it was oftener, but that is as close as I can get to it.

Q. Why did you consider him a very sensible old gentleman?

A. His conversation in regard to business matters, &c.

Q. What business matter did you ever talk over with him?

A. Nothing of any business with myself, but in regard to the state of affairs—renting houses and collecting rents.

Q. What did he ever say to you about renting houses and collecting rents?

A. He used to say that it was hard to collect rents, and sometimes he had to put people out of his houses for not paying their rents; something to that effect.

Q. How long did you know Mr. Nailor?

A. I guess about four or five years.

Q. How long have you known Kate Conley?

A. I am not acquainted much with the lady. I never saw her to my knowledge only once.

1208 Q. How long ago was it you were introduced to her?

A. I think it was last November.

Q. Who introduced you to her?

A. I don't know the gentleman's name. I think it was a man who keeps some farm above Georgetown, a countryman.

Q. Where was it?

A. Somewheres near the National Observatory, on 24th street, I think.

Q. How did you happen to meet them there?

A. I was coming from market, I believe.

Q. What market?

A. From the big—the Centre market, on the Avenue, between 7th and 9th streets.

Q. Where were they going?

A. They were inquiring for some woman or girl—some cook that used to live with Mrs. Nailor. They stopped me on the street.

1209 This gentleman has sold me potatoes and corn in the market.

Q. What Mr. Nailor did they say the girl used to live with?

A. With Mr. Nailor that was on the wagon with this gentleman.

Q. You were introduced to Mrs. Nailor, then, and not to Kate Conley?

A. This man says it was Mrs. Nailor, and he told me afterwards she went by the name of Conley. The lady was dressed in black, and I stopped there for some time; the man said he wanted to see me. The lady went into a house looking for the girl she said used to live with her. This, I think, was on 21nd and E.

Q. Where did the man go while she was in the house?

A. I left the man standing on the street waiting for her.

Q. Did she come out of the house while you were standing there?

1210 A. She went to the door and I saw a lady come out and speak to her, and then I went off and left them there.

Q. Did she get back into the wagon with the man?

A. She was standing on the side of the street when I left.

Q. How did the man happen to introduce her to you?

A. I was coming along, and I think they were looking for the house, and they stopped me and asked me if I knew the neighborhood, and I told them yes. I had known the man for years past by buying stuff from him in the market. I had known him for a year or two, but not by name.

Q. Didn't you ever know his name?

A. No; but I know his face well.
Q. Where did he live?
A. I don't know where he lived. He lives in the country, I suppose, somewhere.
1211 Q. Have you no idea whereabouts in the country?
A. No; I have not.
Q. Did he ever tell you who he rented his farm from?
A. No; I don't recollect that he ever did. I guess he owned his farm, but I don't know.
Q. How do you know that that the woman you were introduced to there was Kate Conley, the defendant in this suit?
A. I didn't know; but after this woman went from the wagon to the house she said that she went by the name of Miss Conley or Kate Conley.
Q. And you have never seen her since that time?
A. I have never seen her to know her before or since.
Q. What time in the day was that introduction?
A. I think in the afternoon.
Q. Who requested you to come here and testify?
1212 A. I got a note stating stating that Mr. Carrington wanted to see me at his office. I didn't know the business when I came, and I don't think I would have come if I had known.
Q. How did you get the note?
A. It was left at my store. I don't know who carried it there.
Q. Who was the note from?
A. I am not sure who the note was from. I think it is home yet. It said Mr. Carrington wanted to see me at his office near the City Hall.
Q. Do you say that you do not know whose name was signed to that note?
A. I don't know whether there is a name signed to it or not.
Q. Where is the note?
A. I guess at my place of business, if it has not been put aside somewhere.
1213 Q. Was it signed by anybody you know?
A. I don't know that it was signed at all.
Q. Why didn't you bring it with you?
A. I have been here, this is the third time. I have been here to-day, and was here Friday or Saturday. I didn't know what the business was until I came in here this last time.
Q. Did you bring the note with you the first time you came?
A. No.
Q. Why?
A. I came here and asked, and the colored boy said Mr. Carrington was at the City Hall, and I went over there and couldn't see him.
Q. How did you suppose that Mr. Carrington would know what you came for if you didn't bring the note?
1214 A. Mr. Carrington told me he wanted to see me this afternoon at 3 o'clock or 4.

(Answer objected to.)

Q. Question repeated.
A. I don't know.
Q. When did Mr. Carrington tell you to come to-day?
A. This morning, between ten and eleven.
Q. How did you happen to come here at ten or eleven this morning?
A. I came here on account of the note.
Q. Was this morning the first time you saw Mr. Carrington?
A. I have seen him before, but this was the first time for a long while to speak with him.
Q. Did you see him when you came on Friday?
A. No, I did not; I saw the old gentleman and his other son.
Q. Who told you to come back at ten or eleven o'clock to-day?
1215 A. I think it was the old gentleman.
Q. Did nobody tell you on Friday or this morning what was wanted of you?
A. The old gentleman, I think, said to me that young Mr. Carrington wanted to see me — if I knew old Mr. Nailor; I told him I did know Mr. Nailor, and he said something about the Conley case, I think.
Q. Then you did know what was wanted of you before you came back the last time to-day?
A. I partly suspected, but I wasn't sure.
Q. Was that the first you ever heard of the Conley case?
A. I think I have seen something about it published in the papers.
Q. Did you never hear of it in any other way?
A. I have heard people talk about it.
1216 Q. Who did you ever hear talk about it?
A. I couldn't exactly say; I think I have heard people talk, and have seen publications in the paper-, but I took no particular notice.
Q. Didn't ever anybody talk to you about it?
A. Well, no; I can't say that any person ever did; I have heard people talk about it, I think.
Q. When did you get the note you speak of?
A. The note came to my place Thursday or Friday.
Q. Will you produce the note?
A. If the note is there, I will bring it with me if necessary.
Q. Did you know that Mr. Nailor was living with Kate Conley when you knew him?
A. Well, no, I was never in her house and had never seen
1217 her but upon this one occasion; I didn't know whether he was married or single.
Q. Did you e- er see Mr. Nailor drink?
A. Yes; Mr. Nailor and I drank together—I couldn't say how often.
Q. About how many times?
A. Not more than five or six times; I never had more than one or two drinks with him on any one occasion.
Q. Did you ever see him intoxicated?
A. No; I can't say I ever saw him the worse for liquor.

Q. How long have you lived in Washington?
A. About twenty-three years.
Q. Where were you born?
A. In Ireland.
Q. What part?
A. County Tyrone, north of Ireland.
Q. Can you read and write?
A. A little.

JAMES McLAUGHLIN.

1218 Subscribed and sworn to before me this 12th day of April, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until April 16, 1880.

APRIL 16, 1880.

In consequence of engagement of counsel, adjourned until April 19, 1880, at 3 o'clock p. m.

Deposition of Edgar H. Bates for Defendant. (*Filed Jan.* 14, 1881.)

APRIL 19, 1880.

Met pursuant to adjournment.

Present: Mr. Cole, for complainants, and Messrs. Carrington, Rutherford & Thompson, for defendant; whereupon EDGAR H. BATES,
1219 a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON:

Q. Where do you reside, and what is your occupation?
A. 414 H street N. E.; I am not doing much now; I am an agent for a book concern in New York, but have not done much at it; I was a magistrate here for about twenty-five years.
Q. How long have you resided in Washington?
A. I came here in 1833, and have been living here most of the time ever since, except for about a year.
Q. Did you know Allison Nailor, Sr.?
A. I did.
Q. For how long did you know him?
A. I have known him, I suppose, about forty-five years, certainly for forty years.
Q. Did you know him intimately?
1220 A. Well, I had a considerable business with him at times.
Q. What business was he engaged in when you first knew him?
A. He was blacksmith, wheelwright, carriage-maker, and he run omnibuses, too—he was most of everything. Once in a while he would buy some negroes and sell them, speculate in that way.
Q. Did he buy and sell slaves to any considerable extent?
A. I have heard of him frequently buying and selling slaves.
Q. When was the last time you saw him?

A. I can hardly tell; I believe, though, it was probably six months before his death; I met him on 12th street near Ohio avenue, I think it was.

Q. Did you converse with him on that occasion?

A. I did.

1221 Q. What did you talk about?

A. He was talking about different things; he was in his carriage, and I stood there, I suppose, half an hour or so talking with him. He was speaking of rents, that it was a hard matter to collect money, and so on.

Q. Did you ever do business with him?

A. Yes, sir; I have done business with him, considerable business at times.

Q. What kind?

A. In a magisterial way; sometimes getting tenants out for him, sometimes debt cases, &c.

Q. What was his manner of doing business?

A. I considered him a very — business man.

Q. Was he close or liberal in his business transactions?

1222 A. He was rather close; I know sometimes I would have hard work to get my fees out of him—that is, to get him to pay the regular fees.

Q. What makes you say he was close?

A. Well, I would tell him the price of a landlord and tenant writ, and he would always consider it high, and that I must deduct something from it. In debt cases, though, he would generally pay the regular price without objecting.

Q. When was the last time you had a case for him?

A. I am not now positive; I think the last case I had was in 1876.

Q. What was his mental condition during the period you knew him?

A. I considered him all right as far as his mental faculties were concerned. I never saw anything out of the way with him.

1223 Q. How did his mental qualities compare with those of other men, and particularly as to shrewdness in business transactions?

A. I think, sir, he was an extraordinary man; that is my opinion about him, as I have often said. He knew more about business when half drunk than most men do when they are sober.

Cross-examined by Mr. COLE:

Q. How long since you were a magistrate?

A. In 1875. I had some difficulty with the Commissioners of the District, and Birney, who was District Attorney at the time, undertook to dismiss me. I sued the Commissioners, and they put in a demurrer that they had a right to dismiss me, and the court in banc decided in their favor.

1224 Q. The District Commissioners removed you from office, and you sued them to compel them to restore you, and the court decided that the Commissioners had the power to remove you,

and the court could not compel them to restore you; is not that the fact about it?

A. I think it was in January, 1875. Birney, who was District attorney at that time, dismissed me, and of course, I suppose it was sustained by the Commissioners. I sued the Commissioners for $10,000 damages, believing that Birney had no authority to dismiss me. I was told by several lawyers that he had no authority, and I continued my business; I never did much after that until the case was decided.

Q. When were you removed?

1225 A. I think it was in January, 1875.

Q. And you have not been a magistrate since that time?

A. No, sir.

Q. Then how did you happen to have a landlord-and-tenant case for Mr. Nailor in 1876?

A. I didn't say a landlord-and-tenant case; I said I done business for him. I think it was to write him some notices for his tenants.

Q. Is that the last business you ever did for him?

A. I think it was. I wrote some notices for him, I know, when he was an 14th street. I think it was about 1876 or along there. I would frequently meet him and have a talk with him. He would say he wanted to get some parties out of his houses and ask me to write the notices.

1226 Q. Did you ever do any other business for or with him except magistrate business and writing notices for him?

A. No; I don't know that I ever did.

Q. Do you know of your own knowledge that Mr. Nailor ever bought and sold any slaves?

A. No, sir; I never saw him. That was only what I would hear, the common report.

Q. Then why did you testify that he did?

A. That was his reputation. I would hear it every day, frequently; everybody knew that.

Q. You have been a magistrate a good while, have you not?

A. Yes, sir; a great many years. I think I was appointed in 1852.

Q. Did you not learn in that long experience that a witness should not testify to anything he does not know of his own knowledge?

1227 A. Yes; I suppose I ought to know better. The question was asked me and I did not think at the moment of saying that I did not see him buy or sell.

Q. I suppose Mr. Nailor was actively engaged in business down to about the time of his death?

A. Well, I can't say exactly that. I believe he was mostly collecting his rents in the latter part of his days. I don't know anything he done, except looking after after his farms and so on.

Q. How long was it that he didn't do anything in particular, except to collect his rents and look after his farm?

A. That was my impression. I only saw him occasionally and never inquired particularly whether he was carrying on business or what he was doing.

1228 Q. How often did you see Mr. Nailor during the last six years of his life?

A. I don't think I have seen him a dozen times in the last six years. Occasionally we would meet and have some little talk together.

Q. When was it you saw him the last time?

A. I saw him, I think, the last time six months or a year before his death on 12th street and Ohio avenue.

Q. About how long ago was that?

A Seems to me it is about a year ago. I don't think it is over that, a year or so.

Q. Do you think it was as long as a year ago?

A. I should think it was.

Q. More?

A. A year or more. I can't tell. I took no particular notice of the time.

1229 Q. How much more than a year was it?

A. I can't say how long, but I know it was some time before his death.

Q. Do you know how long he has been dead?

A. I do not.

Q. What time of the year was it you last met him?

A. It seems to me it was in the fall of the year, if I don't mistake.

Q. Did you ever talk with him upon any other subject, except collecting rents, &c.?

A. I never did, nothing more than business.

Q. You were not at all intimately acquainted with him?

A. Well, we were very sociable together, not intimate; we would always stop and have a long chat.

Q. And do you think you talked with him as many as twelve times during the last six years of his life?

1230 A. I should think I had. I am not positive.

Q. What did he say in any of those conversations that made you think he was a sharp business man?

A. Well, from the way he would act as his own attorney when I would have a suit or a landlord-and-tenant case for him—he would his own case. That is what made me think so.

Q. Is that all that made you think so?

A. Well, I frequently heard other parties speak about his business qualifications in addition to my own knowledge of him.

Q. When did he ever act as attorney in his own case?

A. I couldn't tell you; it was frequently the case.

Q. And you thought that was an evidence of his being a smart business man?

1231 A. I should suppose so.

Q. Did you ever know him to plead his own case within the last ten years?

A. Really. I can't say.

Q. How did you happen to come here as a witness?

A. I will state this: that some months ago I was selling some

books, and I didn't know who lived there; but I went into the house where Miss Conley lived and asked her to buy a book, and I saw it was Miss Conley. I had seen her before. She got to talking about different things, and asked me if I didn't know Mr. Nailor. I told her I did, very well, and then she got to talking about this suit, and so on; that is about the way it happened.

Q. And then did she ask you to come and testify?

A. Yes. She said if I knew Mr. Nailor she would like me
1232 to testify to what I knew about him. I told her I didn't know whether what I knew would do any good, but I was willing to come up and testify to what I knew.

Q. Did she buy a book of you?

A. Yes, sir.

Q. What?

A. Moore's poems.

Q. Buy more than one?

A. I think probably she bought two.

Q. What was the other one?

A. I think it was Shakspeare.

Q. Did she read any from them?

A. I didn't see her.

Q. Did she look into them and examine them?

A. I don't know whether it is any consequence. I suppose she looked at them. She bought them and paid [for] them.

Q. How much did she give you for the two?

A. I think they were $3.50 each.

1233 Q. Was anybody present?

A. No; I don't think there was.

Q. Then you knew her before you went there to sell her books?

A. Oh, yes; I had been at his house once or twice when he was on 14th street.

Q. Did you know Mr. Nailor was living with her without being married to her?

A. I didn't know anything about it; I had heard so.

Q. What is your present business?

A. I am selling Bibles and Grant's Travels Around the World. Until four weeks ago I did sell Dickens and Shakspeare and Moore.

Q. How long ago was it you sold the books to Kate Conley?

A. I can't say exactly; I think it was last summer?

Q. Did she tell you then you were to come here and testify to-day?

A. No, sir.

Q. How did you find out you were to come to-day?

1234 A. Mr. Carrington spoke to me Thursday to come Friday; I was here Friday and he left a note; it was postponed until to day.

Q. Who sent you here to see Mr. Carrington in the first place?

A. She asked me if I would call by and see Mr. Carrington, and see if he wanted me.

Q. When did she ask you that?

A. Some time ago; I can't tell exactly when it was.

Q. How did you happen to call on Mr. Carrington on the particular day you did call?

A. I was coming by and Mr. Carrington spoke to me.

Q. Coming by where?

A. Coming by the office here.

Q. Did you come in before he spoke to you?

A. No, sir; he called me; I was in a hurry at the time, too.

1235 Q. When did you last see Kate Conley?

A. I saw her a few days before I came by here; it must have been the first of last week.

Q. Did she ask you then to come by here?

A. She asked me then if I had seen Mr. Carrington; I told her no; I hadn't seen him.

Q. Question repeated.

A. No; she didn't at that time.

Q. Where did you see her the first of last week?

A. At her house.

Q. How did you happen to go there?

A. I went there to try and sell her another book.

Q. Did she buy a book this last time?

A. No.

Q. What books did you have then?

A. I had Grant's Travels.

Q. Anything else?

A. No, sir.

1236 Q. How many times have you been there between the time you sold her the books and the time of your last call the first of last week?

A. I have been there frequently; I sold her the books on fifty cents cash and twenty-five cents a week, and I have been there to collect the twenty-five cents.

Q. Did you ever go there without getting the twenty-five cents?

A. Yes; I think I have; she hadn't it several times.

Q. Did you ever go there before you went to sell the books?

A. No, sir.

Q. Didn't you testify when you first begun to speak about the books that she bought them and paid for them?

A. Yes, sir; I say she paid for them?

1237 Q. Didn't you say she paid for them at the time she purchased them?

A. No, sir.

Q. Has she paid for them?

A. She has paid for one, I know, and I think she has paid for the other. Another man collected for one of the books.

Q. What made you say she had paid for them when you didn't know?

A. I thought at the time I had collected for both, but I recollected afterwards I didn't collect but for one.

EDGAR H. BATES.

Subscribed and sworn to before me this 19th day of April, 1880.
IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until April 20th, 1880, at 3 o'clock p. m.

1238 *Deposition of Marx Marx for Defendant.* (*Filed Jan.* 14, 1881.)

APRIL 20, 1880.

Met pursuant to adjournment.

Present: Messrs. Rutherford and Carrington, Jr., for defendant, and Mr. Cole for complainants; whereupon MARX MARX, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Gen'l RUTHERFORD:

Q. State your place of business and what your business is.

A. 441 7th street northwest. I am in the clothing and gentleman's furnishing business.

Q. Did you know Allison Nailor, Sr.?

A. I have sold him clothes several times.

Q. How long did you know him?

A. I have been in the business four years, and I sold him
1239 clothes the first season, in the fall.

Q. How frequently did you sell him?

A. Twice or three times a year.

Q. When was the last occasion?

A. Winter before last.

Q. Can you give about the date?

A. I think in the winter of 1879.

Q. On the occasions when he made purchases from you did you have any conversations with him in reference to such purchases, or other subjects?

A. I remember the last time when he was in, to return a pair of pants which did not fit him the way he admired. I wanted to give him another pair out of my stock which wasn't exactly the same number he mentioned, but which I imagined would fit him, but he wouldn't
agree to take any other size, and I had to go to work and send
1240 the measure on, which I took according to what he mentioned.

Q. On the occasion that you conversed with him, how did he talk and act; did he seem to know what he wanted? State as fully as possible.

A. Always; he knowed exactly what he wanted as far as I noticed of him. He often remarked, Never mind what you have got; give me what I ask you for.

Q. What is your opinion as to his mental condition on the different occasions that you saw him?

A. I couldn't form any other opinion than as to any one else's. He always acted square and honest, and whatever he spoke came out that way.

Q. Did you ever have any conversations with him on any
1241 other subjects than those connected with the purchases he was making?

A. He often used to tell me about former olden times; how active he was in his young days, when business was different from what it is at present.

Q. You say, in reply to a question as to when was the last occasion on which you sold him goods, that you think it was in the winter of 1879. Are you sure about this?

A. Last winter was 1879, and winter before last was 1878, when I sold him the goods. I ain't sure whether it was the winter of 1878 before New Year or after New Year, but I am sure it was winter before last. If necessary I can get the date of the last time when he was up in my store.

1242 Q. Was Mr. Nailor a close man in his bargains?

A. On one occasion, when we had made a bargain of $18, he remarked in the presence of his wife, they lived together, that you mustn't give a Jew what he asked, and he tryed to get me down to $16.

Cross-examined by Mr. COLE:

Q. When did you ever see Mr. Nailor with his wife?

A. It was about four years ago, when I brought a bundle over to his house which his wife bought, and I met him in the room; he tried the clothes on; and on several other occasions.

Q. Where did you see her?

A. I seen her in the store and in the house where he was living.

Q. Didn't you know that Mr. Nailor was not married to
1243 that woman, but that he had a wife living?

A. I didn't know that at the first time, but at the last, a short time before he di-d, I found it out talking to a friend of mine whom I met on the Avenue.

Q. You know it now, don't you?

A. Yes, sir.

Q. Then why did you refer in your examination-in-chief to Kate Conley as Mr. Nailor's wife?

A. I did not know it any other way; I always had the direction to bring the bundle to Mr. Nailor's house.

Q. But you did know when you gave your evidence-in-chief that Mr. Nailor was never married to Kate Conley and that she was never his wife; why did you call her so in giving your evidence?

A. I never knowed any other way until lately.

1244 Q. But you did know when you came here to-day that she never was his wife, did you not?

A. I only know from what I have heard lately that she ain't his proper wife.

Q. Then you had heard she was not his wife?

A. I have heard it; yes, sir.

Q. Did you believe she was not his wife when you came here to-day?

A. I could hardly say that, as I have seen children in the house and he was petting them; and she even came up once and asked me for children's clothes.

Q. Who did you ever hear say she was Mr. Nailor's wife?

(Objected to by Mr. Carrington.)

A. Mr. Nailor used to remark when I was over to the house, Did she offer you that? and he would say, Those little fellows make
1245 such noise; and I imagined from that that she must have been his wife. I used to address her that way and she always answered to that

(Answer objected to, and——)

Q. Question repeated.

A. I know he remarked, if he came by himself to my place: My old woman, did she pick this out?

(Answer objected to, and——)

Q. Question repeated.

A. Nobody particular.

Q. Where did Mr. Nailor live when you first went to his house?

A. On 14th street south, I think; you passed by the Washington Monument and left it to the right.

Q. How long ago was that?

A. If I remember right it is between three and four years ago.

Q. Where did he live when you last went to his house?

A. Down here in what you call Hooker's Division, south
1246 of the Avenue, on 10th or 12th street, I don't remember which.

Q. When was that?

A. Winter before last, 1878, I think it was.

Q. How many times did you go to his house between those two occasions?

A. I recollect twice on 14th street, and twice or three times when he lived down here.

Q. Have you been to the house where Kate Conley lives since Mr. Nailor died?

A. No.

Q. Have you seen her?

A. Yes, sir; I met her on the street several times.

Q. Have you never seen her any place else?

A. I seen her once in my store.

Q. Who asked you to come here and testify?

A. I think it was Mr. Carrington, or one of the Mr. Carringtons.

Q. When did you see Kate Conley last?

1247 A. Last week, or the week before that.

Q. Where?

A. In my store.

Q. Did she talk to you about this case at that time?

A. She asked me if I remember- her yet, as I had not seen her for some time. I didn't recognize her at first and asked her what she

wished. She told me she was the one who had bought clothes for Mr. Nailor; then I recollected her.

Q. Question repeated.

A. She mentioned it, if I had any objection, as long as I was acquainted with Mr. Nailor, if I was called upon by one of the lawyers to appear and say what I know.

Q. Did she buy anything of you that day?

A. She did not.

1248 Q. In your examination-in-chief you first testified that the last time you sold Mr. Nailor any goods was in the winter of 1879; you afterwards changed it and said it was in the winter of 1878; between the times of so testifying did you not have a private conversation with Gen'l Rutherford, of counsel in this case?

A. I did not, but when I remarked in 1879 I meant the winter, if it was before New Year, 1878; if after New Year, 1879, of which I am not quite sure, but it was winter before last.

Q. Didn't you converse with Gen'l Rutherford before making that change in your testimony?

A. I did not.

Q. What makes you think Mr. Nailor was sharp in his bargains?

A. He was always grumbling about the price, and often
1249 remarked that she was not smart enough for us.

Q. What made you think he was a competent man to do business?

A. He always asked about different business men who had been in business, inquired about them, and spoke of different business matters whenever I met him.

Q. How many times did you ever see Mr. Nailor all told?

A. I suppose ten or fifteen times to my recollection.

Q. In a period of about four years?

A. Yes, sir.

Q. Do you think that you obtained in that time a competent and accurate knowledge of his mental condition and ability to do business?

A. I think so.

1250 Q. You think there is no doubt about that?

A. I haven't got the least doubt.

Q. I mean, have you any doubt that you obtained by those interviews a full, complete, and perfect knowledge of Mr. Nailor's mental condition and competency to do and transact business during the last two years of his life?

A. As far as my judgment goes, I think he was fully competent.

(Answer objected to, and——)

Q. Question repeated.

A. As far as my judgment goes, I think he was fully able.

(Answer objected to, and——.)

Q. Question repeated. Don't you understand the question?

A. I do understand the question; I think from what my judgment is that he is capable to do whatever he is capable to do.

1251 Q. Do you think you had means and opportunities to obtain a full and complete knowledge of his condition and capacity?

(Objected to by Mr. Carrington.)

A. That is more than I can say, as we haven't been long enough together at one time; I ain't judge enough to judge his whole mind and everything.

Q. Were you in business for yourself at that time?

A. Yes, sir; with a partner.

Q. And are you still?

A. I am.

M. MARX.

Subscribed and sworn to before me this 20th day of April, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned until April 22, 1880, at 3 o'clock p. m.

1252 *Deposition of John T. Price for Defendant.* (*Filed Jan.* 14, 1881.)

APRIL 22, 1880.

Met pursuant to adjournment.

Present: Mr. Cole for complainants, and Mr. Carrington, Jr., for defendant; whereupon JOHN T. PRICE, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON:

Q. What business are you engaged in?

A. The livery business.

Q. How long have you resided in Washington?

A. I moved here on the 5th day of December, 1865.

Q. Where is your place of business?

A. 311 6th street N. W.

1253 Q. Do you know William Edge or Edd, who has testified in behalf of the complainants in this case?

A. I do, sir.

Q. How long have you known him?

A. All his life; he was born and raised in Alexandria, not far from me.

Q. What occupation or business does this man follow?

A. I believe he has been clipping horses during the winter.

Q. State if you had any conversation with him in reference to this case?

A. On 6th street I met him a couple of days after the trial of a case of Mr. France's purchasing a clipping machine, before a justice of the peace on 7th street, in which trial I was a witness. Mr. Edd was a witness also, but did not appear. I met him on 6th

1254 street one or two days after that trial, in front of the National Hotel, on the 6th-street side. I asked him what was the

the reason he was not at the trial. He then went on to tell me that he wasn't going to appear there, and then went on to state what Mr. Nailor wanted him to swear to about this woman; he called her name, but I don't recollect it now. He said he wasn't going to do it, and I then mentioned to him that if anything of the kind was the case, it was a bad thing if it was true, let alone if it was not true. I then left him and went to the stable and mentioned it to some persons there.

Q. What did he say Mr. Nailor wanted him to swear to?

A. About his having conversation with this woman.

1255 Q. What did he say, if anything, as to the truth of what Mr. Nailor wanted him to swear to?

A. He didn't say there was any truth in it at all.

Q. Did he say that he had not slept with her, or otherwise?

A. There was no such question as that before us about his sleeping with her.

Q. Did he say that he had had connection with her or not?

A. He said he had not had; that Mr. Nailor wanted him to testify that he had been with this woman, but that it wasn't true, and he wasn't going to do it. I mentioned it the same night to several persons in the stable; George Wright was one.

Q. What did he say, if anything, about being paid for his testimony, and by whom?

1256 A. He didn't say how much, but he intimated that Mr. Nailor was going to assist him in the clipping machine. He didn't say which Mr. Nailor; he only said Mr. Nailor.

Q. Do you know whether or not he was assisted in the purchase of a clipping machine?

A. Well, he got one, but I don't know who assisted him.

Q. You speak of a magistrate's suit; what was that about?

A. That was between Mr. France and a gentleman in Philadelphia for the purchase of a clipping machine the season previous to this. I speak of that case to fix the date of the conversation, which was one or two days after the trial. In this case I was a witness and Mr. Edd was also a witness, but did not appear.

1257 Q. Do you know from whom and by what means Edd purchased this clipping machine?

A. I don't know anything in the world about where or how he got it. I know he got it.

Q. Did you hear subsequently that Edd had testified in this case?

A. Yes, sir; by George Wright.

(Counsel for complainants objects to the testimony of this witness as incompetent and irrelevant, being the declarations of a person not a party to the record and not made in the presence of any party to the record, and if the object of it be to impeach the witness Edd, or Edge, it is also incompetent for that purpose.

Mr. Cole says he does not desire to cross-examine.)

1258 JOHN T. PRICE.

Subscribed and sworn to before me this 22nd day of April.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned to a day to be agreed upon.

Deposition of Harriet Waters for Defendant. (*Filed Jan.* 14, 1881.)

JUNE 22, 1880.

Met pursuant to agreement of counsel.

Present: Mr. Cole for complainants, and Mr. Carrington, Jr., for defendant; whereupon HARRIET WATERS, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

1259 By Mr. CARRINGTON:

Q. Where do you reside?
A. 510 26th street, Washington, D. C.
Q. What is your business?
A. Washing and ironing.
Q. Do you know Catharine Conley?
A. Yes, sir.
Q. Did you ever live in the house with her and Allison Nailor, Sr.?
A. No, sir; I lived with her, but I don't remember seeing him there.
Q. Who lived in the house at that time?
A. No one but Mr. Nailor and Miss Kate and the children and myself were there.
Q. Then you did know Mr. Nailor?
A. Yes, sir.
Q. What did you mean by saying you did not see Allison Nailor, Sr., there?
A. I knew he had a son by the name of Allison Nailor. I never remember seeing him there. I did not know Mr. Nailor's first name.

1260 Q. Did you sever see a man by the name of Thomas Trundle there?
A. Yes, sir.
Q. When?
A. In January.
Q. How long ago.
A. It was three years this January gone.
Q. How long did he stay there?
A. Only two nights.
Q. How many children did Kate Conley have at that time?
A. She had three.
Q. How old was the youngest?
A. Going on three months old.
Q. Were the children sick or well at that time?
A. They were sick.

Q. What was the matter with them?
A. They had the dip-theria.
Q. How sick were they?
A. Willie was getting better; Walter was the worst one; he was very sick.
Q. How sick was he?
1261 A. He was very sick.
Q. How long did he live?
A. He only lived a few days after Trundle was there.
Q. Where did the children sleep during the time Trundle was at the house?
A. Willie slept with Mr. Nailor and Mr. Trundle and Walter and Edna; we was up all night with them, they was so sick.
Q. In what room were they?
A. Down stairs in the dining-room.
Q. In what did they sleep?
A. Edna was in the crib, and she had Walter in her arms.
Q. What did you do, as far as the children were concerned?
A. I was up the whole time they were; up with the children.
Q. How many nights had you and Miss Conley been up with these children nursing them?
1262 A. We were up, as near as I can recollect, for two weeks with them.
Q. Where did Trundle sleep during the time he was there?
A. Upstairs in the front room with Mr. Nailor and Willie.
Q. Was Trundle drunk or sober while he was there?
A. He had been drinking right smart; I taken him to be intoxicated.
Q. What led you to believe he was intoxicated?
A. He smelt very strong of liquor.
Q. Anything else?
A. He got up during the night and threw up all over the top of the trunk.
Q. How many rooms were there on the first floor of that 14th street house?
A. There was three; two on the second and two on the
1263 third, and a small room over the kitchen.
Q. Out of which room on the first floor did the stairs lead?
A. The dining-room.

Cross-examined by Mr. COLE:

Q. Where do you live now?
A. 26th street, 510.
Q. What do you do there?
A. I don't understand what you mean?
Q. Does your husband live there with you?
A. Yes, sir.
Q. Keep house?
A. Yes, sir.
Q. How long have you been married?
A. A little over three years, to the best of my knowledge.

Q. You are a colored woman, I believe?
A. Yes, sir.
Q. How long did you live at Kate Conley'-?
A About five or six months the first time.
1264 Q. When did you go there the first time?
A. The first winter month.
Q. What month was that?
A. I don't remember.
Q. Was it February?
A. No, sir.
Q. Was it January?
A. No, sir.
Q. Was it December?
A. It was December, I think.
Q. Was that the time you saw Trundle there?
A. No, sir. I saw Trundle the second time I went there. That was three years ago this last January.

her
HARRIET x WATERS.
mark.

Test: I. WILLIAMSON.

Subscribed and sworn to before me this 22nd day of June, A. D. 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

1265 *Deposition of John Cruikshank for Defendant.* (*Filed Jan.* 14, 1881.)

JOHN CRUIKSHANK, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Mr. CARRINGTON, Jr.:

Q. What is your profession?
A. I am an attorney-at-law and examiner in chancery.
Q. Did you take the depositions as examiner in chancery in equity cause No. 4212, Fletcher *v.* Fletcher?
A. Yes, sir.
Q. Did you take the deposition of one Allison Nailor, Sr., in behalf of the plaintiff in that cause?
A. I did.
Q. Look at this deposition and say whether that is the signature of Mr. Nailor thereto.

(Deposition shown witness.)

1266 A. This is his signature; he signed it in my presence. I see by the certificate that I administered the oath to him.
Q. Did you write that deposition as he gave it to you?
A. Yes, sir; I believe it is in substance as he testified.

JNO. CRUIKSHANK.

Subscribed and sworn to before me this 22d day of June, A. D. 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Mr. Cole waives any cross-examination, but objects to the foregoing deposition as incompetent.

Adjourned until June 23, 1880, at 2 o'clock p. m.

JUNE 23, 1880.

In consequence of absence of witnesses adjourned to a day to be fixed.

1267 *Deposition of Benjamin J. Darneille for Defendant.* (*Filed Jan.* 14, 1881.)

WEDNESDAY, *July* 7, 1880.

Met pursuant to agreement of counsel.

Present: Mr. Cole for plaintiffs and Gen'l Rutherford for defendant; whereupon BENJAMIN J. DARNEILLE, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Gen'l RUTHERFORD:

Q. Please state your residence and business.

A. I am a practising attorney, and reside in this District, and have so resided since 1873.

Q. Did you know Allison Nailor, Sr., in his lifetime; and, if so, how intimately?

A. I knew him tolerably well. I have seen him repeat-
1268 edly. He was at the office of Peter & Darneille repeatedly on business.

Q. When did you become acquainted with him?

A. I think several years before his death. My impression is that for three or four years before his death I knew him, and heard him in business conversation.

Q. From your acquaintance with Mr. Nailor what is your opinion as to his business capacity and mental condition during the time you knew him?

A. I never suspected his not being of sane mind. I think he was always rational, so far as I perceived. So far as I know or believe he was capable of business transactions.

Q. During all the time you knew him, and from your
1269 knowledge of him as a business man, and in the year 1878, was his mental capacity such as to enable him to make a valid conveyance?

A. I never suspected any deficiency or want of ability to perform such an act at any time during his life.

Q. From your knowledge of him was he not a shrewd, careful, business man?

A. I am not prepared to answer that either way satisfactorily to myself.

Cross-examined by Mr. COLE:

Q. Where did you reside prior to 1873?

A. In Richmond up to 1873, and the time I came here, at least my office was there, although my family lived in the country, and I was part of my time with my family.

Q. Did you ever see Allison Nailor before coming to Wash-
1270 ington?

A. No, sir.

Q. When was Mr. Nailor last at the office of Peter & Darneille on business?

A. I could not say.

Q. Can you give us any definite idea about how long ago it was?

A. He may have been in our office in 1875 or the early part of 1876.

Q. About how often did you see him at the office prior to that time?

A. I have no definite recollection, but he was there repeatedly.

Q. Come there on business?

A. Always, I think.

Q. What business?

A. Court business. There was a divorce suit between himself and his wife; besides that we had some other business for him.

Q. Did you ever see him at any other place beside
1271 your office and talk to him?

A. On the street, and possibly some other place. I don't recollect whether I talked to him about anything else than business. I cannot say whether he had any conversation with me personally about his law business or with Peter in my presence. I think he talked to us both.

Q. Did you see him any to talk about business in 1878?

A. I am not sure that I did or did not.

BENJ'N J. DARNEILLE.

Subscribed and sworn to before me, this 7th day of July, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

1272 *Deposition of John Selden for Defendant.* (*Filed Jan.* 14, 1881.)

JOHN SELDEN, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

By Gen'l RUTHERFORD:

Q. Please state your residence and business.

A. I reside in the city of Washington and am a lawyer. I think I was admitted to the bar about ten years ago.

Q. Did you know Allison Nailor, Sr., in his lifetime; and, if so, how long and how intimately?

A. I cannot say that I had any acquaintance with Allison Nailor,

Sr., in his life. I think I was never introduced to him, nor
1273 do I remember ever to have had any conversation with him except at the trial table.

Q. When and on what occasion was the trial you refer to?

A. Some years ago, I cannot recollect the date, although I think it was about the year 1873, I brought certains — of ejectment for certain real property in the city on E street, between 13th and 14th streets, comprising, according to my present recollection, which is not very distinct, part of lot 2 in square 254. The defendants in the ejectment claimed right of possession as lessee through the main conveyance of Allison Nailor, Sr., to his son Allison Nailor, Jr. In the progress of this litigation I believe there were three trials
1274 before the jury. The records of the suit are, of course, the best evidence and will correct any imperfection of my memory on the subject. At all of those trials Allison Nailor, Sr., appeared as a witness for the defendants and in support of the title under which they defended. My only knowledge of Allison Nailor, Sr., is and has been acquired through such, his testimony as a witness in this litigation.

Q. From that knowledge what is your opinion as to his mental and business capacity at that time?

(Objected to by Mr. Cole, because the knowledge of the witness does not appear to be sufficient to enable him to give an opinion which ought to be taken as testimony.)

A. I had at these trials no means of knowing, and no mo-
1275 tive to inquire as to the qualifications of Mr. Nailor as a business man, nor do I know at this time anything upon the subject. There was nothing, however, either in the nature or tendency of his evidence, and he was cross-examined at great length on each of the trials, to induce me to suppose that his mental faculties were or had become at all impaired.

Cross-examined by Mr. Cole:

Q. What was the general tendency of Mr. Nailor's testimony?

A. The general tendency of his testimony was, of course, in favor of the title that he was called as a witness to support. The general features of his testimony were, as I now remember, as follows:
1276 That at a sale of the property in question in 1845 under a deed of trust, executed by Wm. O'Neal as early as 1820, Mr. Nailor, the witness, had purchased the property; that he remembered with great distinctness that the sale was cried; that the flag was flying; that certain persons whom he knew were present at the sale; that the property was struck off to him as the highest bidder; that he complied with the terms of sale; paid part of the purchase-money in cash to the auctioneer, whom he remembered; that he afterwards improved the property; and that he had for a long time afterwards, and until the conveyance of the land to his son, been in possession thereof under claim and color of title.

1277 Q. What was the final result of the suit?

A. No result, which can properly be considered as final, has

yet been reached in these cases. The ultimate verdict of the jury was in favor of the plaintiff; but under bond, operating as a supersedeas, the cases were carried to the Supreme Court of the Unsted States, and are now pending in error.

Q. Did the verdict depend upon the correctness of the testimony of Mr. Nailor?

(Objected to as too general.)

A. It is, of course, impossible for me to say with any degree of certainty upon what considerations the jury founded their verdict, or what weight they gave to the testimony of Mr. Nailor as a
1278 witness, but I cannot see how, if the jury considered the facts stated in the testimony of Mr. Nailor to be established to their satisfaction; they could have failed to find a verdict for the defendants.

JOHN SELDEN.

Subscribed and sworn to before me this 7th day of July, A. D. 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Adjourned to a day to be fixed.

Deposition of Margaret Riley for Defendants. (*Filed Jan.* 14, 1881.)

THURSDAY, *July* 8, 1880.

Met pursuant to agreement of counsel.

1279 Present: Mr. Cole, for plaintiffs, and Mr. Carrington, Jr., for defendant; whereupon MARGARET RILEY, a witness of lawful age produced, sworn, and examined by and in behalf of defendant, deposes and says as follows:

By Mr. CARRINGTON, Jr.:

Q. Where do you live?

A. On 20th street, between L and M streets, northwest.

Q. Did you ever live at Jackson City, the Virginia terminus of the Long bridge?

A. Yes, sir.

Q. How long did you live there?

A. Between five and six years. I left there June, two years ago.

Q. What relation are you to Patrick Hynes?

A. His mother-in-law.

Q. Do you know a man by the name of Patrick McNamara?

A. I do, sir.

Q. How long have you known him?

1280 A. In the neighborhood of twelve years; that long, anyhow.

Q. Did he visit your house at Jackson City?

A. Yes, sir; very often.

Q. Do you know Catharine Conley?

A. I do, sir.

Q. How long have you known her?

A. I think in the neighborhood of thirteen or fourteen years.

Q. Do you remember upon one Sunday evening, between four and five years ago, while Patrick McNamara was in your house at Jackson City, Catharine Conley, accompanied by two children, coming to your house, and, after she had left, your asking McNamará if he did not know who that was, you saying it was Kate Conley, and he said, "No, I have never seen her before," or words to that effect?

A. Indeed he did, sir.

Q. Now state what occurred that Sunday afternoon.

1281 Objected to by Mr. Cole, because improper.

A. That Sunday afternoon Patrick McNamara was in the kitchen with me, speaking about his family affairs, and Catharine Conley, accompanied by two children and a nurse, came to the door, and I asked them into the kitchen, and we sat there right smart while—maybe half an hour—and then she said she must go, and I followed them to the door. After she had left I said to Pat McNamara, "I would introduce you to that woman, but I thought you were acquainted." He said, "Who is she?" I said, "That is Catharine Conley, who lives with old man Nailor, and her children," and he said, "I wish you had introduced her. I have heard
1282 a good deal about her, but I have never seen her before to-day."

(Mr. Cole objects to the foregoing answer because it is hearsay testimony and otherwise incompetent.)

Q. What sort of a looking man is Patrick McNamara?

A. He is a short, stout, red-headed man.

Q. Has he any nick-name?

A. I always knew him by the name of Baldy McNamara.

Cross-examined by Mr. Cole:

Q. When was this?

A. I think it was about four or five years ago.

Q. It may have been more than five years ago?

A. No, sir; I don't think it is.

Q. You have no other event or circumstance by which you can fix the time, have you?

1283 A. Well, no; I have not, he was over there so often. She had a baby in the carriage and a child walking.

Q. How, then, can you say that it was not more than five years ago?

A. It is not more than five in any case.

Q. How are you able to say positively that it is not more than five years ago?

A. I don't say positively, but to the best of my knowledge and memory.

Q. Are you intimate with Catharine Conley?

A. I have known Catharine Conley a long time.

Q. Do you visit her frequently, and does she visit you frequently?

A. No, sir; she does not visit me frequently, nor I her frequently.

Q. Did you ever call on her when she was living with
1284 Mr. Nailor?

A. Very often, on my way home, when they lived on 14th street.

Q. Did she ever call on you during the same time?

A. Yes, sir; right often.

Q. Did you know that she was living with Mr. Nailor at that time without being married to him?

A. I did, sir.

Q. Has she called on you since Mr. Nailor died?

A. Yes, I think she has, on two or three occasions. Her friends live up there all about me, and she sometimes calls in.

Q. Have you called on her since his death?

A. Yes, I guess I have, once or twice.

Q. Any business matters with her since his death?

A. Not any that I had.

Q. Has any of your family?

1285 A. That is something I can't answer. I am speaking for myself.

her
MARGARET x RILEY.
mark.

Subscribed and sworn to before me this 8th day of July, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

(Adjourned to a day to be fixed.)

Deposition of Malcolm Douglas for Defendant. (*Filed Jan.* 14, 1881.)

MONDAY, *July* 12, 1880.

Met pursuant to agreement of counsel to take testimony in behalf of the defendant.

Present: Mr. Cole and Mr. Carrington.

MALCOLM DOUGLAS, a witness of lawful age, produced, sworn, and examined by and in behalf of the defendant, deposes and says as follows:

1286 By Mr. CARRINGTON:

Q. Where do you reside?

A. In this city, between 14th and 15th and B and C streets, southwest.

Q. In what business are you engaged?

A. I am a carpenter by trade.

Q. Did you know Allison Nailor, Sr.?

A. Yes, sir; I knew him about forty years.

Q. Look at this paper, marked "C. C. No. 1," and tell me whose handwriting the signatures of the witnesses are.

A. The first is that of Mr. Alman, the second is my signature, and the last is that of Dr. Hammett.

Q. In whose handwriting is the name Allison Nailor, signed to this paper?
A. In his own.
Q. Did you see him write it?
A. I did, sir.
Q. In whose presence did he sign his name?
1287 A. The three witnesses were present at the time—only those three.
Q. Did you see the other two witnesses sign their names?
A. I did.
Q. In whose presence did they sign?
A. In the presence of Mr. Nailor and the three witnesses.
Q. Who requested the witnesses to sign their names?
A. Mr. Nailor.
Q. What was the condition of his mind at that time?
A. The same as usual; I saw nothing different from what I had always seen him. He appeared in a good humor.
Q. Was he of sound mind at that time?
A. Yes, sir; I should say so.
Q. Was he sober?
A. Yes, sir.
Q. Did you have any conversation with him at that time?
A. Only a few remarks about the weather.

1288 Cross-examined by Mr. COLE:

Q. Where did you see Mr. Nailor sign the paper referred to?
A. I do not remember the date, or the day of the week even.
Q. How long ago was it?
A. I do not know that I can remember that; it was while he lived on 14th street, and previous to his removal [to] 12th street.
Q. How long was it before Mr. Nailor died?
A. I do not know; I paid no attention to that.
Q. Was it five years?
A. No, sir; I guess not.
Q. How long was it?
A. I don't know; paid no attention, sir.
Q. How do you know it wasn't five years then?
A. To the best of my knowledge.
Q. To the best of your knowledge, then, how long ago was it?
1289 A. Having kept no account I shall not attempt to name the time.
Q. Can't you give any idea of the time?
A. No, sir.
Q. Who else was present besides you?
A. Mr. Nailor himself, James Alman, and Dr. Hammett.
Q. Anybody else?
A. No, sir.
Q. Did you see anybody else while you were in the house?
A. Some of the family, downstairs; I passed them going up and coming down.

Q. Who?
A. I paid no attention.
Q. Did you read the paper?
A. No, sir.
Q. Was it read in your presence?
A. No, sir.
Q. Was anything said about it in your presence?
A. Mr. Nailor stated it was his will.
1290 Q. Was that all he said?
A. Yes, sir.
Q. Did he say who wrote it?
A. He did not.
Q. Did he say he wanted you to sign it?
A. He did.
Q. Were Alman and Hammett there when you went there?
A. They were.
Q. How happened you to go there?
A. He sent for me.
Q. How do you know?
A. That is what his messenger told me when he came after me.
Q. Who was the messenger?
A. His son.
Q. Which one?
A. The oldest one of the two, I believe.
Q. What did he say?
A. As well as I remember his message was, "Father wants to see you; please come over to the house."
Q. Did he tell you what he wanted of you?
1291 A. When I got there Mr. Nailor told me what he wanted.
Q. Did the messenger tell you what he wanted?
A. He did not.
Q. Then you didn't know what was wanted until you got to the house?
A. I did not.
Q. Did he have any other business with you on that occasion?
A. None whatever.
Q. How far did you live from him?
A. About a couple hundred yards.
Q. How long were you there?
A. Fifteen or twenty minutes.
Q. Why did he say he made the will?
A. He did not say.
Q. Did he say who he had given the property to in the will?
A. He did not.
Q. Say anything about the residue of his property?
1292 A. Nothing.
Q. Were you well acquainted with him?
A. I had known him a long while, and we always spoke when we met.
Q. Did he ever say anything to you before that time about making a will?

A. Never spoke to me on the subject.
Q. Nor afterwards?
A. No, sir.
Q. Did he talk about anything else than the will at the time he signed it while you were there?
A. Only some remarks about the weather.
Q. Where was Mr. Nailor when you went in?
A. He was in the second-story front room.
Q. What was he doing there?
A. When I went into the room he was talking to the Dr. and Mr. Alman.
Q. What was he saying to them?
1293 A. I do not know.
Q. Did he stop talking with them as soon as you went in?
A. He did; he spoke to me and told me what he wanted.
Q. Was he standing or sitting at that time?
A. Standing at the front window, to the best of my knowledge.
Q. Did he sign the paper before or after you got there?
A. Afterwards.
Q. Did Alman and Hammett sign it before or after you got there?
A. After.
Q. And you were there fully fifteen minutes?
A. About that time.
Q. During that time Mr. Nailor said nothing but that that paper was his will?
A. That is about all.
Q. Did you or Alman or Hammett say anything?
1294 A. As neighbor- we spoke to one another some commonplace remark.
Q. Didn't ask him who he had given his property to, any of you?
A. I did not, and did not hear the others.
Q. Do you know Catharine Conley?
A. Never saw her that I know of until she moved to that neighhood.
Q. Do you know her?
A. Yes, sir.
Q. How long have you known her?
A. I have known her since Mr. Nailor moved into that neighborhood.
Q. Ever hear her say anything about Mr. Nailor making a will, or giving some property to her children?
A. Never had any conversatiou with her on that or any other subject prior to his death.
Q. Have you had any since?
1295 A. Only then that she had twice been to see me to have me call here to see Mr. Carrington.

MALCOLM DOUGLAS.

Subscribed and sworn to before me this 12th day of July, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

Thomas McCabe Called for Completion of his Cross-Examination.

NOVEMBER 18, 1880.

Met ——

Present: Mr. Carrington for defendant, and Mr. Cole for complainants.

THOMAS MCCABE is here called for the completion of his cross-examination upon his re-call as a witness for the defendant.

[On margin:] See page 93.

By Mr. COLE:

1296 Q. Look at the paper now shown you, marked Exhibit C. C., No. I, filed with the testimony heretofore given by you in the case, and say if you know in whose handwriting the paper is.

A. It is in that of Francis Schreiner, an attorney-at-law, I think. I wrote it out from what Mr. Nailor laid down, and thinking it might not be all right got Mr. Schreiner to rewrite it.

Q. Then this is the will you prepared or had prepared for Mr. Nailor?

A. Yes, sir; it is the one I delivered to Mr. Nailor as the will prepared by me for him.

Q. When did you deliver it to Mr. Nailor?

A. I couldn't tell you now; I can't recollect; it was soon after it was written.

Q. When was it written?

A. I can't recollect.

1297 Q. Do you remember Mr. Nailor's being sick in the winter of 1878, say in January, about one year before he died, so sick as to be confined to his bed?

A. I recollect his being sick, but can't locate the time.

Q. Do you remember whether you delivered this paper to him before or after this sick spell?

A. I could not tell; I have been hurt on my head with a brick since my last testimony, and I can't bring my mind to recollect.

Q. Do you know how soon Mr. Nailor signed this paper after you gave it to him?

A. I don't; I wasn't at the signing.

Q. Didn't you learn in any way that it had been signed?

A. I might, but I don't recollect how long after.

1298 Q. Where does Mr. Schreiner live?

A. In this city. I couldn't tell; you will find it in the directory. He was a professional man.

Q. What business is he engaged in?

A. Clerk in the quartermaster's department.

Q. Was he at the time he wrote this paper?

A. Yes.

THOMAS McCABE.

Subscribed and sworn to before me this 18th day of November, 1880.

IRVING WILLIAMSON,
Examiner in Chancery.

I, Irving Williamson, examiner in chancery, do hereby certify that in pursuance of agreement of counsel the foregoing 584 pages of depositions were taken down and reduced to writing by me,
1299 in the presence of and from the statements of the several witnesses, and were subscribed by them in my presence, said witnesses having first been sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy.

IRVING WILLIAMSON,
Examiner in Chancery.

1300 *Depositions on behalf of the Complainants in Rebuttal.* (*Filed Jan.* 14, 1881.)

Certificate of Notary Public.

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHERINE CONLEY. } No. 6658.

I, Marion Dorian, a notary public in and for the District of Columbia, do hereby certify that the annexed depositions, from page 2 to 37, both inclusive, were reduced to writing by me (under and by virtue of an express agreement and stipulation in writing, and hereto annexed) in the presence of the witnesses therein named, and in the presence of the counsel for the complainants and defendant,
1301 the said witnesses having been first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matters in controversy in the above-styled cause, commencing on the 19th day of October, 1880, and ending on the 3d day of November, 1880.

[NOTARIAL SEAL.]

MARION DORIAN,
Notary Public.

Stipulation as to Marion Dorian (Notary Public) Taking Testimony in Rebuttal for Complainants. (*Filed Jan.* 14, 1881.)

In the Supreme Court of the District of Columbia. Equity.

RACHEL D. NAILOR *et al.*
vs.
CATHARINE CONLEY } No. 6658.

OCTOBER 19TH, 1880.

It is hereby stipulated between the counsel for the respec-
1302 tive parties to this suit that the testimony in rebuttal on behalf of the complainants shall be taken before Marion

Dorian, a notary public in and for the District of Columbia, commencing on the 19th day of October, 1880, at 6 o'clock p. m.

C. C. COLE.
ALLAN RUTHERFORD.
CARRINGTON & CARRINGTON.

Deposition of Nicholas Callan in Rebuttal for Complainants. (*Filed Jan. 14, 1881.*)

OCT. 19, 1880.

Met pursuant to above stipulation.

Present: C. C. Cole, Esq., on behalf of complainants, and Gen'l Allan Rutherford and E. C. Carrington, Esq., on behalf of
1303 defendant; whereupon the complainants introduced as a witness on their behalf NICHOLAS CALLAN, who, being duly sworn, testified as follows:

Q. I believe you are the same Nicholas Callan who has testified as a witness in this case on behalf of the defendant?

A. I am the same identical person who testified in this case once before.

Q. In your former examination, in answer to a question, you said among other things, that on "another occasion I was at his house (meaning the house of Allison Nailor, Sr.) in South Washington, on 13th or 13½ street; that I went there on that occasion with a Mr. McCabe, who was employed in the Quartermaster General's
1304 office, to take an acknowledgment to a deed to Mr. McCabe; he (meaning Mr. Nailor) was then reclining on a sofa, quite feeble and unable to execute the deed in consequence of his infirmities; he remarked that he would examine the deed and, if it was all right, would call at my office some day afterwards, but never called." How did you happen to go to the house of Mr. Nailor on the occasion referred to?

A. I was called upon by Mr. McCabe at my office; he informed me that Mr. Nailor desired to see me for the purpose of taking his acknowledgment to a deed.

Q. You state, in your testimony above quoted, that you went on that occasion to take the acknowledgment of a deed to Mr.
1305 McCabe. How did you get the impression that you were to take the acknowledgment of a deed to Mr. McCabe—from him or from Mr. Nailor, or from both of them?

A. From Mr. McCabe.

Q. Did you ever go to Mr. Nailor's house with Mr. McCabe, or at his request, on any other occasion than the one above referred to?

A. Never.

Q. Mr. McCabe, who has testified in this cause, in giving an account of what transpired on that occasion, says that "Mr. Nailor showed you the papers and asked you your opinion as to their validity—whether they were legally made out, so that the property could be transferred by them; that you made answer that there was no necessity for you doing that, as he (Mr. Nailor) was fully competent to know whether they were

1306 legally made out or not." He further states that the papers referred to on that occasion were deeds conveying the property in controversy in this suit to Kate Conley, for herself and in trust for her children, or some of them, which papers had been drawn by him at the request of Mr. Nailor. I wish you would state whether or not upon that occasion any papers were exhibited to you by Mr. Nailor or Mr. McCabe, and, if so, what they were or what they purported to be, and whether your opinion was asked in relation thereto, and what your response was, if any.

1307 A. There were no papers submitted to me on that occasion, either by Mr. McCabe or Mr. Nailor. My opinion was not asked by either of the gentlemen in relation to any paper whatever. I gave no opinion.

Q. I wish now you would state, as fully as you can, what occurred on that occasion between Mr. Nailor and Mr. McCabe in your presence, what they said to each other, and what each of them said to you, if anything?

A. When we arrived at Mr. Nailor's dwelling I found Mr. Nailor reclining on a sofa, covered with a sheet or covering of some kind. Mr. McCabe remarked that he had brought Mr. Callan, a notary public, to take his (Nailor's) acknowledgment to a deed. Mr. Nailor

1308 promptly replied that he would not execute it, and refused to do so on the ground that he did not understand it. The deed was not submitted to me, and I never saw it; never gave any opinion. Mr. McCabe was evidently very much disappointed at the refusal of Mr. Nailor's to sign the deed.

Q. I wish you would state what Mr. McCabe said, if anything, to Mr. Nailor on that occasion about executing the deed?

A. Simply that he was there with Mr. Callan to get his acknowledgment, without stating what the deed was—its purposes.

Q. State whether Mr. McCabe asked Mr. Nailor to execute the deed more than once on that occasion?

A. I don't recollect particularly, but recollect that Mr. Nailor positively refused to execute it. He may have asked him

1309 more than once, but I do not recollect particularly.

Q. Do you remember whether they had any conversation on that occasion which you did not hear?

A. I think not, sir.

Q. Can you remember about what time this was?

A. I cannot without looking at my records.

Q. Was it before or after Mr. Nailor executed the deeds before you which are in controversy in this suit?

A. It must have been after. I can give the exact date by looking at my records. My best recollection now is that it was in February.

Cross-examined by Mr. CARRINGTON (for the defendant):

1310 Q. Have you talked with any of the complainants with reference to your testimony since you gave your evidence in behalf of the defendant?

A. Yes, sir.

Q. Which one?
A. Mr. Washington Nailor.
Q. When?
A. Within the last month, or certainly two months, I have conversed with Mr. Allison Nailor, Jr., not on the subject of my testimony, but on the subject of his father's affairs.
Q. How often did you talk with Washington Nailor about this case?
A. About three times. Mr. Nailor called to see me to learn, if possible, the day upon which Mr. McCabe and myself went to his father's house. I told Mr. Nailor that I did not recollect the day and that it was probable that I could give him the precise
1311 day after I had examined my record for that purpose. I subsequently searched for the entry and found it. Some days thereafter Mr. Nailor was passing my place of business. I hailed him in the street and told him I had examined my record and found the day and date, and handed it to Mr. Nailor in writing.

The examination of this witness is closed, except the counsel for the complainants reserves the right to recall the witness for the purpose of fixing the date mentioned in his testimony in relation to the interview between Messrs. McCabe and Nailor and himself.

N. CALLAN.

Subscribed and sworn to before me this 19th day of October, 1880.

[NOTARIAL SEAL.] MARION DORIAN,
Notary Public.

1312 Adjourned until Friday, Oct. 22d, 1880, at 2 p. m.

MARION DORIAN,
Notary Public.

OCTOBER 22D, 1880.

Met pursuant to adjournment.

Present: C. C. Cole, Esq., on behalf of complainants, and Gen'l Allen Rutherford, E C. Carrington, and Charles Thompson, Jr., Esq., on behalf of the defendant; whereupon the complainants recalled the witness, NICHOLAS CALLAN, for further examination.

Q. Are you now able to fix the date that you went with Mr. McCabe to the house of Mr. Nailor related in your examination at the last session?
A. I am.
Q. What was the date?
A. The 23d day of January, 1878.

N. CALLAN.

1313 Subscribed and sworn to before me this 22d day of October, 1880.

[NOTARIAL SEAL.] MARION DORIAN,
Notary Public.

Deposition of Jacob Poss for Complainants. (*Filed Jan.* 14, 1881.)

JACOB POSS, a witness who has heretofore testified on behalf of the complainants, is recalled for the purpose of cross-examination by the counsel for the defendant.

Q. What business are you now engaged in?

A. Keeping a livery stable.

Q. How long have you been engaged in that business?

A. About six years.

Q. What were you doing at Brightwood?

1314 A. I kept the hotel there and used to deal in stock.

Q. What hotel?

A. It was called Brightwood Park at that time. The same place that Moses keeps now.

Q. What did you do between the time that you left Mr. Nailor's farm and the time you kept the hotel at Brightwood?

A. I kept the hotel at Brightwood before I went to Mr. Nailor's.

Q. What years were you at Brightwood?

A. I think from July, 1862, up until 1865. I think I was there a fraction over three years, and then I sold out.

Q. What business were you engaged in prior to that time?

A. I was engaged in the hotel business with an uncle of mine attending to the bar and the hotel at the corner of 11th street and the Avenue, called the European Hotel.

1315 Q. Where did you go after you left Brightwood?

A. I rented a farm in Prince George county and stayed there one year—the farm of Mrs. Kirkwood, adjoining Mr. Riggs'; this was in 1866 or thereabouts. After that I rented a farm in Montgomery county belonging to Henry Dodge, of Georgetown, and after that I rented Mr. Nailor's place for five years, and then went to Rockville, and have been in the livery business ever since.

Q. How many times did you see Mr. Nailor in Rockville?

A. That I couldn't tell; have seen him there right often.

Q. What do you mean by right often?

A. Well, I suppose a dozen times a year; have seen him there about twenty times, I guess.

1316 How many times did you see him while you lived in Prince George county?

A. Well, some days I'd see [him] three or four times a day, and sometimes I wouldn't see him for two or three days; used to see him every time I came to town. Him and I used to deal considerable in horses, mules, or anything that came to hand.

Q. Was he generally intoxicated at that time?

A. Not at that time; no, sir.

Q. How long did you see him in Rockville during the year 1878?

A. I couldn't really say that I saw him there more than once or twice. Once I saw him there with Miss Conley, or whatever they call her, and a little boy; I think I had seen him there about twice before that year.

1317 Q. What month was it you saw him and Miss Conley there?

A. I cannot say; I did not take any notice.

Q. Did he drive up on that occasion?

A. I think not, sir; I think he came up on the cars and hired a conveyance and was driven down over the road.

Q. What rent were you to give him for the farm?

A. I paid him $500 a year.

Q. Did you pay him all that you owed him?

A. I think I overpaid him. There was money that he owed my wife which he denied owing, and he beat me out of it. Him and his oldest son——

(Question and answer objected to by Capt. Cole.)

Q. Was he a pretty close collector?

1318 A. I can't say that he was, for I know of money that was due him through the country that he never went to see about.

Q. How was he with you?

A. He never bothered me for any money. I always paid him and let him have any provender or stock that I had to sell, until the last year he came out there and threatened to shoot me, and ordered me off his farm. He had one of his crazy fits on him again. There was no provocation. He swore that I was robbing him after having overpaid him in his rent.

Q. How did he say you robbed him?

A. He swore that I sold his own stock that he had starved before I got there. Some half dozen I bought from him; some died,

1319 and some were just able to get along, and some I sold for him and give him returns.

Q. He wanted you to pay for these cattle he accused you of stealing?

A. No; he wanted the cattle, and took one cow away while I was absent—one that he had never seen before—and drove her right over to Miss Conley, on 14th street, and give it to her.

Q. Then he simply wanted you to leave the place?

A. I couldn't exactly say that. I told him I would get away from his place. That was about the conversation. I said, "Damn his place, I would not be bothered with it." He was cursing me and I him.

Q. Did you ever get your cow back, or try to get her back?

1320 A. Have tried to get her back, but never succeeded. I have been allowed a part of her value. His son was there and allowed me part of her value, but not her full price.

Q. So he got that much the better of you?

A. He did, because he was in whiskey all the time, and I did not want to have any fuss with him. I settled it the best I could.

Q. Was that your last business transaction with him?

A. It was with him; yes, sir. One time after my boy was taking a cow to market and he bought her from him, and paid him fifteen dollars on it and told him he would pay him the balance, but afterwards he refused to do it, and when I went after him he re-

1321 fused to pay it and I let it go.

Q. That — your last business transaction with him?

A. Yes, sir; that one was with the boy; he couldn't have had it with me.

Q. Can you mention any business transaction that you had with him in which you got any decided advantage over him, within the last fifteen years?

A. I can't say that I had any until after 1871, when I bought some hogs from him at about one-fourth their value, and in 1872, when I bought a reaper from him very low; he first told me he would sell it to me, and then he told me I could take it and repair and use it, and not pay him anything for it.

1322 Q. Did you move from his country place to Rockville?

A. Yes, sir.

Q. You are now horse dealing?

A. Yes, sir; to some extent.

Q. Have many transactions with Mr. Nailor's sons, either or both?

A. I don't recollect having any transactions with Allison, and only one with Washington, when I traded one mare for another, a little over a year ago.

Q. Was that about the time you gave your testimony-in-chief in this case?

A. I think it was afterwards, but am not quite certain.

Q. Have you talked often with Mr. Washington Nailor about this case?

A. I don't recollect having any conversation with him at all;
1323 yesterday he sent me a postal card to come down, that they wanted to cross-examine me; I looked over part of my testimony to-day; certain portions of it, not all.

Q. Did you ask to have it shown you?

A. I think I did.

JACOB POSS.

Subscribed and sworn to before me this 22d day of October, 1880.

[NOTARIAL SEAL.] MARION DORIAN,
Notary Public.

Adjourned until Monday, October 25th, 1880, at 2 o'clock p. m.

Deposition of Dr. Charles M. Hammett in Rebuttal for Complainants.
(*Filed Jan.* 14, 1881.)

OCTOBER 25TH, 1880.

1324 Court met pursuant to adjournment.

Present: C. C. Cole, Esq., on behalf of complainants, and Gen'l Allen Rutherford and E. C. Carrington, Jr., Esq., on behalf of defendant; whereupon Dr. CHARLES M. HAMMETT, a witness of lawful age produced, sworn, and examined by and in behalf of the complainants, deposes and says:

By Mr. COLE (for complainants):

Q. What is your residence and occupation or profession?

A. 644 F St. S. W. I am a practising physician.

Q. How long have you been practising medicine?
A. Twenty-four years.
Q. Where?
A. Fourteen years in Maryland and ten in Washington?

Q. Did you ever attend professionally Allison Nailor, Sr.,
1325 in his lifetime; and, if so, when?

A. I know positively I attend*ing* him in January, 1878, and in January, 1879, when he died, and perhaps on one or two occasions before that, but cannot give dates.

Q. How long did you attend him in January, 1878?
A. I think I made him about a dozen visits.
Q. What sickness did he have at that time? Describe his condition, as near as you can.
A. In January, 1878, he had bil*l*ious remitt*a*nt fever. I found him with considerable fever, and delirious, with intermissions of the fever.
Q. State whether he was dangerously ill at that time.

A. He was quite sick, but not dangerously ill.

1326 Q. How far apart were the visits you made him during his illness?

A. I think I made him ten or eleven visits on consecutive days, and towards the last passed over a day or two, and then visited him again.

Q. Please state whether, on the occasion of any visit during that sickness in January, 1878, you witnessed a signature of Mr. Nailor's to a paper?
A. I did.
Q. On what visit?
A. To the best of my knowledge it was on my last visit. I am satisfied of that.
Q. State whether your visits to him on the occasion of this sickness in question commenced in January, 1878?

A. To the best of my recollection it did.

1327 Q. State whether you ever witnessed Mr. Nailor's signature to any other paper than the one above mentioned?

A. Emphatically no; never saw his signature before that day or since.
Q. State whether the paper was read in your presence.
A. No, sir.
Q. State whether you knew, from any source, what the contents of it was at that time.
A. I can't say that I knew the contents of it at all, but Mr. Nailor made some remark at the time about conveying some property, but I did not pay any attention to it.
Q. Who else, if any one, witnessed Mr. Nailor's signature to the same paper?

A. There were two others with whom I was not acquainted.

1328 They were both strangers to me—would not know them again if I should see them.

Q. State whether the last of your visits to Mr. Nailor, when you

witnessed that paper, may have been as early as the last part of December, 1877.

A. Don't think so; don't see how it could be.

Q. How do you fix the time?

A. Simply by reference to my books that I kept at the time.

Q. At the time of Mr. Nailor's last sickness state whether or not he remained sensible up to the time of his death; and, if not, how long before his death he became insensible.

A. I will state positively that he was not sensible up to the time of his death. How long before I can't recollect. He
1329 did not recognize his sons thirty-six hours before his death.

Q. About how well did you know Mr. Nailor?

A. My acquaintance with him was of a professional character almost entirely.

Q. Did you ever visit him professionally prior to the occasions mentioned above?

A. I think I did, once or twice.

Q. Look at the paper marked Exhibit C. C. No. I, now shown you, and say whether the signature of C. M. Hammett affixed thereto as a witness is yours.

A. Yes, sir.

Cross-examined by Mr. CARRINGTON (on behalf of defendant):

Q. Look at this paper marked Exhibit C. C. No. 10, and tell me if this is your handwriting.

A. Yes, sir.

1330 (Objected to by Mr. Cole, because the witness has not testified in his direct examination in relation to any of the matters stated in the affidavit.)

(Affidavit filed by Mr. Carrington and marked Exhibit C. C., No. 10.)

C. M. HAMMETT.

Subscribed and sworn to before me this 25th day of October, 1880.

[NOTARIAL SEAL.] MARION DORIAN,
Notary Public.

Deposition of William A. Leech in Rebuttal for Complainant. (*Filed Jan.* 14, 1881.)

WILLIAM A. LEECH, a witness of lawful age produced, sworn, and examined by and in behalf of the complainants, deposes and says:

1331 By Mr. COLE:

Q. State your residence and occupation.

A. I live at 406 1st St. S. E.; I work in the Navy Yard.

Q. Did you know Allison Nailor, Sr., in his lifetime?

A. I seen him once or twice.

Q. Do you know Kate Conley?

A. Yes, sir.

Q. Do you know a man by the name of William F. Beans?

A. Have met a man named Beans, but don't know his first name. He told me that he lived on a farm belonging to old man Nailor.

Q. Did you ever meet Beans at the house where Kate Conley lives; and, if so, when?

A. I met him some short time after Mr. Nailor died; I am not able to say the date.

1332 Q. Did you ever meet him there on more than one occasion?

A. No, sir.

Q. Please state what occurred between you and him and Kate Conley at that time, if anything; what he said to you about her and what he did to her in your presence, if anything.

A. He asked me out to treat me. I am not able to say what we had to drink; I could not tell whether it was whiskey or beer. After we had had some drink we came out of the saloon to go in, and he asked me how many times I had been at the house and was I doing any good. I asked him what he meant. He made answer and said: "I'll show you what I mean." When he came into

1333 Kate Conley's house there was an old fat lady there, and he caught hold of her and hugged her, and she called him a scoundrel and struck him with a broom, or broom handle, I don't know which. This was in the kitchen. He turned to Kate Conley and put his arm around her neck and run his hand up her clothes. She told him she would put him out of the house, and that he was a ruffian and had better be home with his wife.

Q. State what you know, if anything, about Kate Conley's furnishing liquor to Mr. Nailor.

A. When I came from New York, I became acquainted through some friends of mine with old Mr. Nailor over on 14th St. I

1334 had broken up in the liquor business and brought some whiskey and Holland gin, and I asked Mr. Nailor if he would not buy some of my Holland gin from me; that it was pure; don't recollect whether I asked him myself, or whether one of my friends asked him. And he said he would—bring him over a gallon. I did so. Kate Conley was with him when he was asked to buy the gin. I brought him the gallon of Holland gin, and when I went in with it I delivered it to Kate Conley, and to the best of my recollection she paid me five dollars on it. The old man was sitting in the corner *of* the fire. She drew a fair drink for the old man, and

1335 he drank it and said it was good and said he had drunk as good, but no better.

Q. How long did you and Beans remain at Kate Conley's on the occasion referred to after you went out and got a drink and returned?

A. About three-quarters of an hour. I left him there.

Q. State how Kate appeared under the treatment which you say Beans gave her?

A. She seemed to get mad at him. She came out of the kitchen and told him she would put him out. I came out of the kitchen then into the dining-hall, where two friends were waiting for me,

and she returned to the kitchen and spoke something to somebody. I can't say whether it was him, which — could not hear, and
1336 then she came back into the dining-hall and he after her, and I got up and left in a few minutes.

Q. Who did you leave there when you left?

A. I left the stout woman and another woman sitting against the door, and a colored man in the yard—can't tell what he was doing—and Kate and Beans.

Q. What time in the day or evening was this?

A. Some time after twelve o'clock—long before dark.

WILLIAM A. LEECH.

Subscribed and sworn to before me this 25th day of October, 1880.

[NOTARIAL SEAL.] MARION DORIAN,
Notary Public.

1337 *Washington T. Nailor, one of the Complainants, Recalled in Rebuttal.* (*Filed Jan.* 14, 1881.)

WASHINGTON T. NAILOR, recalled on behalf of complainants by Mr. COLE:

Q. Please state whether your father was conscious up to the time of his death; and, if not, how long before his death he became unconscious?

A. I saw him about forty-eight hours before he died and he did not know me and he could not speak. He remained unconscious until he died.

Q. Do you know the witness, Robert Meredith, otherwise known as Wineberry, who has testified on behalf of the defendants?

A. I do.

Q. He stated in his testimony that you told him on one
1338 occasion that if you won this case he should have the finishing of the house on the farm; I wish you would state whether you ever said that to him, or anything equivalent to it.

A. I never did.

Q. Do you remember of ever talking to him about the case?

A. I was talking to him on 14th street, in the presence of Matthew Trimble, who heard every word I said.

Q. How many times did you talk with him about the case.

A. Only once, I think.

Q. He doesn't say so, but it is a fair inference from his testimony that you talked with him on at least three occasions in reference to the case, and urged him to testify in your behalf. I want to
1339 know whether you did so really, and what object you had in talking with him about the case?

A. I never asked him to testify, neither did I urge him; I simply talked to him to see what I could find out about the case, and I offered no inducements.

Subscribed and sworn to before me this 25th day of October, 1880.

[NOTARIAL SEAL.] MARION DORIAN,
Notary Public.

Adjourned until Tuesday, Oct. 26th, 1880, at 2 o'clock p. m.

OCT. 26, 1880.

Met pursuant to adjournment.

Present: Capt. C. C. Cole on behalf of complainants, and Gen'l Allen Rutherford and E. C. Carrington, Jr., Esq., on behalf of defendant; and there being no witness present, adjourned until Friday, October 29th, 1880, at 4 o'clock p. m.

OCT. 29, 1880.

Met pursuant to adjournment.

1340 Present: Capt. C. C. Cole on behalf of complainants, and Gen'l Allen Rutherford and E. C. Carrington, Jr., Esq., on behalf of defendant; there being no witnesses present adjourned until Wednesday, November 3d, 1880, at four o'clock p. m.

Deposition of Matthew Trimble one of the Complainants in rebuttal.
(*Filed Jan.* 14, 1881.)

Nov. 3, '80.

Met pursuant to adjournment.

Present: Capt. C. C. Cole on behalf of complainants, and —— —— on behalf of defendants; whereupon the complainants introduced as a witness in their behalf MATTHEW TRIMBLE,

1341 who, being duly sworn, deposes and says:

By Mr. COLE:

Q. Are you the same Matthew Trimble that has heretofore testified in this cause?

A. I am.

Q. Do you know the witness Robert Meredith, otherwise known as Wineberry, who has testified on behalf of defendant?

A. I met a man by that name in company with Mr. Wash Nailor.

Q. How many times?

A. Only once, I believe.

Q. Where was that?

A. On 14th street.

Q. About when?

A. I do not recollect the date?

Q. State whether you heard on that occasion any conversation between Mr. Nailor and said Meredith in reference to this case?

1342 A. I heard all the conversation that passed between Mr. Nailor and Meredith; Mr. Nailor asked Meredith a few questions as to his knowledge of any facts connected with Kate Conley and Mr. Nailor.

Q. Meredith states in his testimony that Nailor told him that if the complainants won this case he (Meredith) should have the finishing of the house down on the farm. Please state whether Mr. Nailor said that to him or anything equivalent.

A. There was no such pledge or promise, or anything that could be inferred to mean that made by Mr. Nailor at that time, or at any other time, that I am aware of.

Q. State whether you or Mr. Nailor urged him to testify
1343 for the complainants in this case, or offered him any inducements to do so.

A. Neither Mr. Nailor nor myself either urged him or offered him any inducements to testify.

M. TRIMBLE.

Subscribed and sworn to before me this 3d day of November, 1880.

MARION DORIAN,
[NOTARIAL SEAL.] *Notary Public.*

Adjourned until—.

EXHIBIT C. C. No. 10. (Filed Jan. 14, 1881.)

DISTRICT OF COLUMBIA, *ss:*

C. M. Hammett, being duly sworn, says that he is a physician in active practice, residing at No. 644 "F" St. S. W., in the city
1344 of Washington, D. C.; that he was acquainted with Allison Nailor, Sr., deceased; that he was first called to prescribe for him in the month of April, 1874, and that he attended him professionally thereafter and had every opportunity of judging of his mental condition; that in the opinion of this deponent said Allison Nailor was a man of sound mind and entirely competent in all respects to manage his own affairs; that from his frequent opportunities of judging thereof, had the contrary been the case, he would have known it; that on one occasion, in July, 1878, he directed that the medicine he prescribed for him should be taken in one
1345 oz. of brandy three times daily; that this deponent never saw the said Allison Naylor under the influence of liquor; that in his opinion, based on his professional attendance, said Allison Naylor was a man of clear mind and judgment.

C. M. HAMMETT, M. D.

Sworn to before me this 7th day of March, 1879.

A. E. L. KEESE,
[NOTARIAL SEAL.] *Notary Public.*

1346 *Order Approving Appeal Bond and Directing Money to be Deposited with the Clerk.* (*Filed May* 4, 1883.)

In the Supreme Court of the District of Columbia. Equity.

R. D. NAILOR & Others
v.
CATHARINE CONLEY. } No. 6658.

This day the defendant, Catharine Conley, presented to the court for approval a bond for costs on her appeal to the Supreme Court of the United States signed by herself and John Patch, as surety, who

deposited with the clerk of the court four hundred dollars in money belonging to said Patch, to be held by said clerk as collateral
1347 security for the payment of any liability on said bond, said money to be held by the clerk in the registry of the court until the further order of the court. Complainants' counsel having been duly notified of this application and appearing thereto, it is, this 4th day of May, 1883, ordered that said bond be received and approved, and said money deposited with the clerk, as aforesaid.

By order of the court approved.

D. K. CARTTER,
Ch'f Just.

1348 *Appeal Bond.* (*Filed May* 4, 1883.)

In the Supreme Court of the District of Columbia, the 4th day of May, 1883. In Equity.

RACHEL D. NAILOR, WASHINGTON T. NAILOR, Matthew Trimble, and Lizzie Trimble, his Wife; James W. Clarke, and Frances Clarke, his Wife, Complainants,
vs.
CATHARINE CONLEY, Defendant.
} No. 6658. In Error.

Know all men by these presents that we, Catharine Conley and John Patch, are bound unto the above-named complainants in the sum of four hundred dollars, to be paid to the said above-named complainants, their executors, or administrators, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals and dated this 4th day of May, 1883.

Whereas the above-named defendant, Catharine Conley, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the district of Columbia on the 23d day of February, A. D. 1882: Now, therefore, the condition of this obligation is that if the above-named defendant, Catharine Conley, shall prosecute her said appeal to effect, and answer all damages and costs if she shall fail to make good *his* plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

her
CATHARINE x CONLEY. [SEAL.]
mark.
JOHN PATCH. [SEAL.]

Sealed and delivered in presence of—
ALBERT HARPER.

Witness as to the mark of Catharine Conley:
ALBERT HARPER.

I hereby waive service of the citation on appeal.

COOK & COLE,
Sol'rs for Compl'ts.

By order of the court approved.

D. K. CARTTER,
Ch'f Just.

1349 *Stipulation Waiving Citation.* (*Filed May* 5, 1883.)

In the Supreme Court of the District of Columbia.

R. D. NAILOR *et al.*
vs.
CATHARINE CONLEY. } Eq., 6658.

It is hereby agreed that the citation to the complainants on the appeal to the United States Supreme Court by the defendant may be waived and dispensed with without prejudice to the defendant; but this is without prejudice to the right of complainants to move to dismiss the appeal upon other grounds, if they be so advised.

COOK & COLE,
For Complainants.

1350 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause. Said writings annexed are in three volumes, and consist of 1349 pages.

Witness my hand and the seal of said court this 5th day of May, 1883.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By R. J. MEIGS, JR., *Assistant Clerk.*

Justice's Certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by Return J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 5th day of May, 1883.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, Return J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 5th day of May, 1883.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Assistant Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 223. Catharine Conley, appellant, *vs.* Rachel D. Nailor, Washington T. Nailor, Matthew Trimble, and Lizzie Trimble, his wife, James W. Clarke, and Frances Clarke, his wife. Filed 5th May, 1883.

118-127

Supreme Court of the U. S.

OCTOBER TERM, 1885.

CATHERINE CONLY.
Appellant,

vs.

RACHAEL D. NAILOR, WASHINGTON T. NAILOR, MATTHEW TRIMBLE and LIZZIE TRIMBLE, his wife, JAMES W. CLARKE and FRANCES M. CLARKE, his wife,
Appellees.

No. 223.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

CERTIORARI RECORD.

You, therefore, are hereby commanded that searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same together with this writ before the said Supreme Court forthwith.

[SEAL] MORRISON R. WHITE,
Chief Justice of the Supreme Court of the United States.

The 6th day of April A. D. 1886
JAMES H. McKENNEY,
Clerk Supreme Court U. S.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I. R J. Meigs, clerk of the said court, do hereby certify in return to the writ of *certiorievi* from the Supreme Court of the United States in the case of Rachel D. Nailor, Washington T. Nailor, Mathew Trimble and Lizzy Trimble his wife, and James W. Clarke and Frances M. Clarke, his wife, complainants, and Catherine Conley, defendant, Equity No. 6658, lately pending in the said Supreme Court of the District of Columbia, and moved by appeal to the Supreme Court of the United States; said writ bearing date on the 6th day of April, 1886, that in compliance with mandate of said writ. I have searched the records of said Supreme Court of the District of Columbia in the cause aforesaid, and find, and so certify, that the original pleadings and papers filed in said court in the case of Rachel D. Nailor, against Allison Nailor, Equity No. 3282, mentioned in said writ, are not now on

file amongst the records of said court, but the same have been lost or mislaid and cannot be found. But there are on file in said court in the record of the cause first above mentioned, printed copies of said original pleadings and papers in said cause mentioned, 3282, used at the argument of that cause and of the cause first above mentioned in the Court in General Term, and copies of the proceedings and abstract from the Special Auditor's report made from said printed copies, together with copies of such of the orders made by the Court in said cause and now remainiag on record in the minutes of said court, and such of the docket entries made therein as were selected by the counsel on whose motion the said writ of *certiorari* issued, are returned herewith. The original papers in the case of Allison Nailor, Jr., against Allison Nailor, Sr. and others, Equity No. 6387, in said Supreme Court of the District of Columbia, are still on file in said court, but copies thereof are not returned herewith by instructions of the said counsel, on whose motion said writ was issued.

In testimony whereof I have hereunto affixed my hand and the seal of the said court this 7th day of April, 1886.

R. J. MEIGS, Clerk,
By M. A. CLANCY, Assistant Clerk.

PETITION.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

RACHEL NAILOR, Petitioner,
vs.
ALLISON NAILOR, Defendant.
} No. 3282. Equity,

To the Honorable the Supreme Court of the District of Columbia, holding an Equity Court for said District.

The petition of Rachel Nailor respectfully shows:—

1. That she is a resident of the city of Washington, in the District of Columbia, and has been such resident for upwards of thirty-five years which have elapsed next preceding the filing of this petition.

2. That the defendant, Allison Nailor, is also a resident of the said city and District, and has been such for upwards of thirty-five years.

3. That the peitioner is the wife of the said defendant, Allison Nailor, and by her maiden name of Rachel D. Moland was married to him on or about the 23d day of April, A. D. 1835, by the Rev. Mr. Tibbets, at the residence of her mother, in Montgomery county, in the State of Maryland, and has children by him now living, namely: Allison Nailor, Jr., aged about thirty-seven years; Washington Nailor, of the age of about thirty years; Lizzie Nailor, now the wife of Mathew Trimble, of the age of about twenty-eight years; and Frances Marion Nailor, now the wife of James Wright Clarke, of the age of about twenty-three years.

4. That the said defendant, Allison Nailor, after having lived with the petitioner for upwards of thirty-five years, did, on or about the month of November, A. D. 1870, wantonly and without just cause or provocation of any kind, desert and abandon the petitioner and absent

himself from the house which had been their home for many years; and for the full uninterrupted space of two years and upwards, to wit: for the period of two years and six months next elapsed prior to the filing of this petition, has willfully deserted and abandoned the petitioner, and has persisted continuously in such wilfull desertion and abandonment; and during such period he has not been within their home aforesaid, nor has he visited the petitioner, nor has he cohabited with her, nor has he in any manner discharged the duties incumbent on him as the husband of the petitioner, during said period; and the petitioner blieves that it is his firm purpose and determination to abandon her permanently and forever.

5. That the petitioner earnestly avers and protests that she has given no cause to the defendant for such desertion; and that she has always, according to the best of her knowledge and ability, conducted herself as a faithful wife in her marital relations.

6. That during such period of two years and upwards, for which such wilful desertion and abandonment have continued, the defendant has neglected and refused to furnish to the petitioner the means of procuring the necessaries of life, notwithstanding that he is in the receipt of an annual income of upwards of fourteen thousand dollars derived from the real estate owned by him in the city of Washington and elsewhere; that she has, indeed, at various times received from him some small sums of money through a servant sent by her in her necessities; that she has received some small sums also from Washington Nailor aforesaid, the son of petitioner and defendant, out of rents collected by the said Washington Nailor for the defendant; but the defendant has removed the said Washington Nailor from his agency as

collector of such rents on account of the payment by him, the said Washington Nailor, of such sums to the petitioner, and has notified his tenants to pay rent to no one but himself or upon his direct order; that said sums of money so received by the petitioner were and have been wholly inadequate and insufficient to supply the reasonable wants and necessities of the petitioner; and she has been compelled to borrow money from the aforesaid Washington Nailor in order to procure for herself the common necessities of life.

7. That the petitioner has received no money or means whatsoever from the defendant during the last six months; and, on or about the 22d day of October, A. D. 1872, the said defendant caused an advertisement to be inserted in one of the newspapers of the city of Washington aforesaid, wherein he forbade all persons from trusting any one on his account; and stated that he would pay no bills contracted by any other than himself, thereby intending, as the petitioner believes, to prevent the petitioner from obtaining the necessaries of life by means of the credit to which she was justly entitled as the wife of the defendant. A copy of said advertisement is annexed hereto, marked "Exhibit B," and made part hereof.

8. That the defendant, on the 30th day of October, A. D. 1872, and at various other times during the aforesaid period of two years, and upwards for which his desertion of the petitioner has continued, committed adultery with one Kate Conley or Connelly, at a house on Fourteenth street southwest, in the said city of Washington, belonging to said defendant; that, for the said period or a great part thereof, the defendant has lived, and yet continues to live, in a state of adultery with the said Kate Conley or Connelly, who, in the neighborhood of

said house, where they have been and are now so living together, is known by his name, to-wit: by the name of Mrs. Nailor, to which appellation the petitioner alone is properly and justly entitled; and the said Kate Conley or Connelly claims to have a child by the said defendant. And the said defendant while refusing and neglecting to provide for the wants of the petitioner, has supported or contributed to support the said Kate Conley or Connelly, and has taken the carriage horses, formerly used by the petitioner, and has given them to the said Kate Conley or Connelly, and has paid the debts of the said Kate and the frequent fines imposed on her by the Police Conrt, wherein she has been several times arraigned. And the petitioner charges and avers, that such adultery aforesaid was committed without the consent, connivance, privity or procurement of the petitioner; and that, after the discovery thereof, the petitioner has not in any manner, voluntarily or otherwise, cohabited with the defendant.

9. That during the aforesaid period of two years and upwards, the defendant has become and has continued to to be an habitual drunkard, and has been almost continuously kept under the influence of liquor and in an intoxicated condition by the said Kate Conley or Connelly; and by means of his intemperance and of her influence over him, the said Kate is wasting, dissipating and squandering his estate and his pecuniary resources.

10. That the defendant had always been kind and considerate to the petitioner until he became habituated, as aforesaid, to the use of ardent spirits and fell into dissipated and dissolute habits of life; and the petitioner, in cpnsideration of the many years during which they had lived happily together, and for the sake, also, of the

honor of her children, has been exceedingly reluctant and unwilling to institute any proceedings against him, and now files this petition only because her wants and her miseries have become unendurable.

11. That at the time of her marriage with the defendant the petitioner had considerable means, amounting to about three thousand dollars or upwards, which she gave to the defendant, who was not then wealthy and thereby greatly aided him to acquire the wealth of which he has since become possessed; that to the best of her knowledge and ability she has always been prudent, judicious, industrious, and economical in the management of their household, and has given personal attention to her housework; that the children aforesaid of the defendant and petitioner have have all become prosperous in life; that, as she honestly thinks, the petitioner has always demeaned herself as a faithful, affectionate, and dutiful wife to the defendant, and as a kind and considerate mother to his children; that she does not wish or desire that the bonds should be severed which have for so many years bound her and the defendant together; and that her sole motive in the institution of these proceedings is that, in her declining years when most she needs support and comfort, she should have some provision made for her out of the estate of her husband which she aided him to accumulate and which he is now engaged in dissipating.

12. That the defendant has real estate, situated mostly in the city of Washington and the District of Columbia, but partly also in Montgomery County, in the State of Maryland,—of which real estate an imperfect and incomplete schedule is hereunto annexed, as part of this petition, marked "*Petitioner's Exhibit A;*" that the assessed value of such real estate is about one hundred and fifty

thousand dollars ($150,000,) and its real value is much greater; that the annual income derived by the defendant from the said real estate is about $14,000 or $15,000; that, with prudent and judicious management, which the defendant is now either unwilling or incapable to bestow upon it, the said real estate, as the petitioner is advised, should realize an annual income of $20,000 or $25,000; that the petitioner does not know what amount of personal property the defendant has, and that she is advised that his real estate aforesaid is of about the value of $300,000.

Wherefore the petitioner prays as follows:

1. That the said Allison Nailor be made a party hereto as defendant, and be served with all proper process, and be required to answer this petition.

2. That a separation from said defendant, known as a divorce from bed and board, may be granted to this petitioner by a decree of this Honorable Court.

3. That such permanent alimony or provision out of the estate of the defendant may be allowed to the petitioner and decreed to be paid to her by the defendant, as to the court may seem just, proper and reasonable, in view of the circumstances of the defendant and of the petitioner; and that such alimony may be made a lien on the real estate of the defendant, or that such portion of said real estate should be set apart for the use and support of the petitioner, as to the court may seem right and just in the premises.

4. That the defendant may be enjoined and restrained from selling, disposing of, or in any manner incumbering his said real estate, or any portion thereof, during the pending of this suit, so as to defeat or elude the petitioner's just rights and claims in the premises.

5. That such alimony *pendente lite*, and such reasonable sum to enable her to prosecute the present litigation, as to the court may seem right and just, may be allowed to the petitioner; and that it may please the court forthwith to pass an order requiring the defendant to pay to the petitioner or to her solicitor without delay such alimony *pendente lite*, and such reasonable sum for the expenses of this suit.

6. That the petitioner may have such further and other relief as to the court may seem proper in the premises and the nature of the case may require.

RACHEL D. NAILOR.

R. T. MERRICK,
Solicitor and of Counsel for Petitioner.

I do solemnly swear that I have heard read the above petition signed by me, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated, upon information and belief, I believe to be true.

RACHAEL D. NAILOR.

Subscribed and sworn to before me this second day of June, A. D. 1873.

THOMAS J. MYERS,
Notary Public.

ANSWER.

In the Supreme Court of the District of Columbia.

RACHEL NAILOR
vs.
ALLISON NAILOR. } No. 3282. Doc. 12. Equity.

The answer of Allison Nailor, defendant, to the petition of the said Rachel Nailor, petitoner.

This defendant, saving and reserving to himself all and all manner of benefit or advantage of exception or

otherwise that may be had or taken to the errors, uncertainties and imperfections in the said petition contained for answer, thereto answering, says:

1. This defendant admits that the said petitioner is a resident of the city of Washington, in the District of Columbia, and has been such for upwards of thirty-five years.

2. This defendant admits that he is also a resident of the said city and District, and has been such for upwards of thirty-five years.

3. This defendant admits the marriage of the petitioner with him, the defendant, as averred and set forth in the third paragraph of the said petition, and that there are now living four children born to them of the said marriage, of the names and ages respectively as mentioned and specified in the said third paragraph of the petition.

4. This defendant denies that he did on or about the month of November, 1870, wantonly and without just cause or provocation desert and abandon the petitioner and absent himself from the house which had been their home, and that for the period of two years and six months next prior to the filing of said petition, or for any other period, he has willfully deserted and abandoned the petitioner, and has persisted continuously in such wilful abandonment and desertion; and he further denies that he has not in any manner discharged the duties incumbent upon him as the husband of the petitioner during the said period; and he further denies that it is or has been his purpose to abandon the petitioner permanently and forever.

On the contrary the defendant avers and charges the fact to be that on or about the month of November, 1870,

the petitioner ordered and commanded the defendant to leave the said house; having in like manner, upon frequent and repeated occasions previous thereto, so ordered and commanded him; that her treatment of the defendant was at that time, and for a long time previously, had been harsh and unkind, insomuch that the defendant was compelled to occupy apartments separate and apart from the said petitioner; that thereupon being fully convinced by the conduct of the petitioner, and her manifest disposition toward him, that he could not remain peacefully and quietly with the said petitioner, this defendant withdrew from the said house, and has not since returned thereto, and although the said house was the property of the defendant he permitted the petitioner to use and occupy the same fully and without interruption; and this defendant further avers and says that he has from time to time, and continuously since leaving the said house, as aforesaid, supplied the petitioner with means for her maintenance and support; and the defendant further avers and charges that he has been at all times since leaving the said house desirous to return and live with the said petitioner, and still desires soto do; and that he has at various times by message through the friends and agents of the petitioner communicated such desire to her and requested permission to return, but she has never in any manner indicated to this defendant her willingness that he should so return.

5. This defendant denies that the petitioner has given him no cause for such desertion, (as his leaving the said house is termed in said petition,) and again avers that he only left his said house upon the order of the petitioner, and because she would not allow him to remain in peace and quiet.

6. This defendant denies that during the period mentioned in the sixth paragraph of the said petition the defendant has neglected and refused to furnished the petitioner the means of procuring the necessaries of life; he further denies that he is in receipt of an annual income of upwards of fourteen thousand dollars, or the one-half of that sum, derived from the real estate owned by him in the city of Washington and elsewhere. He further denies that he removed the said Washington Nailor from his agency as collector of the defendant's rents on account of the payment by him, the said Washington Nailor, of sums of money to the petitioner; and this defendant says that his employment of said Washington Nailor to collect his, the defendant's, rents was only temporary, and was occasioned by the defendant's feeble health and inability to attend personally to such collections, and that the termination of such employment and agency was not for any reason alleged in the said petition, but for reasons totally and entirely different. And the defendant further says that since leaving his said house, as hereinbefore stated, he has furnished to the petitioner adequate means and supplies for her comfortable support; that she has at various times returned or refused to accept supplies and provisions which the defendant has sent or caused to be sent to her, stating to this defendant's agents and messengers that she did not want anything more from him.

This defendant avers that he has at all times promptly responded to the petitioner's demands for means, sometimes borrowing money to send her in response to such demands, and that he is now willing, as he has always been, to provide the petitioner with a decent and comfortable support.

7. This defendant denies that the petitioner has received no money or means whatsoever from him, this defendant, during the last six months. He admits that he caused an advertisement to be inserted in one of the newspapers of the city of Washington forbidding all persons from trusting any one on his account, but denies that he thereby intended to prevent the petitioner from obtaining the necessaries of life, as alleged in the said petition; and this defendant says that as he has been at all times and now is ready and willing to furnish and supply to the petitioner the requisite means for her comfortable support it has not been necessary that she should procure anything upon credit, and as this defendant does not desire to incur debts himself he does not wish others to incur or codtract debts for him or in his name, and claims for himself the privilege and the right of making all purchases for which he has to pay. He further says that he caused the said advertisement to be published in order to prevent parties claiming to be his agents, or to to have authority from him, from contracting debts in his name and upon his credit and account.

8. This defendant denies that on the 30th day of October, 1872, and at various other times, as alleged in the said petition, or at any time, he, the defendant, has committed adultery with one Kate Conley or Connelly at a house in Fourteenth street southwest, in the said city of Washington, belonging to this defendant, or at any other place, or that he has lived and still continues to live in a state of adultery with the said Kate Conley or Connelly, or that the said Kate Conley or Connelly is anywhere known by his name, to wit: the name of Mrs. Nailor, or that the said Kate Conley or Connelly claims to have a child by the defendant, or that while refusing or neg-

lecting to provide for the wants of the patitioner he has supported or contributed to the support of the said Kate Conley or Connelley except by the payment to her of room rent for room occupied by this defendent as hereinafter stated.

This defendant emphatically denies that he has taken the carriage horses formerly used by the petitioner and given them to the said Kate Conley or Connelly, or that he has paid the debts of the said Kate or fines imposed upon her as alleged in the said petition.

This defendant says that after being driven by the petitioner from his home, as hereinbefore stated, he sought lodging in the vicinity of the places of his sons, and his own former place of business, and procured such lodgings in the house occupied by the said Kate Conley, for which lodgings he has regularly paid her.

9. This defendant distinctly denies that during the aforesaid period of two years and upwards he has become, and has continued to be, an habitual drunkard, or that he has been at any time kept under the influence of liquor and in an intoxicated condition by the said Kate Conley or Connelly, or that the said Kate is in any manner or to any extent wasting, dissipating and squandering his estate and his pecuniary resources. This defendant says that the charges contained in the ninth paragraph of the said petition are wholly and scandalously untrue, and have no foundation whatever in fact.

10. This defendant denies that he has become habituated to the use of ardent spirits and has fallen into dissipated and dissolute habits of life, and he avers and charges the fact to be: that at all times, both before he was driven from his home, as aforesaid, and since that

time, his treatment of and conduct towards the petitioner has been kind and considerate.

This defendant believes, and so believing, avers that so far from the petitioner being reluctant and unwilling to institute proceedings against her, she fully intended to compel him by her harsh and unkind treatment to leave his home, and thereupon to claim such leaving as a voluntary abandonment and desertion upon his part, and make it the ground for a petition for divorce or separation, as she has done, and that the institution and prosecution of the proceedings is but the execution of such intention and of the plans conceived by her when she undertook to drive this defendant from his home as aforesaid.

11. This defendant denies that at the time of her marriage with him the petitioner had means amounting to about three thousand dollars and upwards, which she gave to the defendant; on the contrary, this defendant says that at the time of the said marriage the petitioner was not, so far as he knew, possessed of any means whatever; that she had not sufficient means to procure her marriage wardrobe, and he, the defendant, contributed largely to the purchase of the same. He denies that the petitioner, by the contribution of means and otherwise, aided him to acquire the wealth of which he has since become possessed; on the contrary, he says that such means or property as he has acquired have been solely the result of his industry and economy, unaided by any one. He, further answering, says: that the said sons of the petitioner, and himself have, through and with the aid and assistance of the defendant, become established in prosperous business, and that he has also given to each of their said daughters a comfortable home, with

other material aid and advancement ; and for a further answer to the eleventh paragraph of the said petition, this defendant refers to the statements, charges, and averments hereinbefore made and expressed.

12. This defendant denies that he is possessed of real estate to the extent charged in the said petition, or that the annual income derived by him from such real estate is about $14,000 or $15,000, as alleged, or the one-half of that sum. He denies that the assessed or real value of the real estate owned by him is as charged in the said petition, or that it approximates thereto, and he says that he does prudently and judiciously, to the best of his ability, manage the said estate, and does realize therefrom all that it can be made to yield.

And further answering the said petition, this defendant say: that he is, and at all times has been, willing to allow and afford to the petitioner a reasonable, proper, and comfortable maintenance and support, and that his willingness in this regard has been and is well known to the petitioner, but she has treated his offers and messages with refusal and contempt.

And this defendant further says that he has been at all times since his separation from the petitioner, as aforesaid, willihg and desirous to return and live with her, and he has caused her to be so informed.

And this defendant further says that the petitioner unnecessarily, and without just cause, has undertaken to incur and contract debts on account of this defendant and in his name, and has instigated and encouraged suits and proceedings at law against him to compel him to pay for articles purchased by her, or for her, without his knowledge or consent and contrary to his known wishes, and which articles were not necessary for the reasonable

comfort or support of the petitioner; and this defendant charges that the said conduct of the petitioner has been principally with a view to vex, harass, and annoy this defendant.

And having fully answered the said petition, this defendant prays that each and every of the prayers of the petitioner be denied, and that he, this defendant, be hence dismissed with his reasonable costs, &c.

JAS. T. PAYNE,
Solicitor for Defendant.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the above and foregoing answer, and know the contents thereof, and that the matters and things therein stated, as of my own knowledge, are true, and those stated upon information and belief I verily believe to be true.

ALLISON NAILOR.

Subscribed and sworn before me, this 13th day of September, 1876.

[SEAL] A. E. S. KEESE, *J. P.*

IN THE SUPREME COURT OF THE DISTICT OF COLUMBIA.

Nailor, Rachel D vs. Nailor, Allison.	For divorce a men et thora and alimony.	Complainant's solicitor, R. J. Merrick.	Defendant' ssolicitor, J. G. Payne.

1873, June	19	Bill—order to file, &c.; filed.	
		" exhibits to, A and B.	
		" Spa. to answers and copy issued.	
		" " " returned; sum'd def't June 19, 1873.	
		Alimony—motion for filed.	
		" " hearing on fixed June 25, 1873, at 10 a. m. (M. 7, p. 356.)	
		" " and copy issued for services on def't.	
		" " returned, "served on def't June 19, 1873."	
	25	" $100 per month ordered and $200 expenses litigation. (M. 7, p. 366, and copy.)	
July	3	" affidavit by marshal as to service of order—jurat.	
		" attachment for ordered. (Min. 7, p. 389.)	
		" attachment for and copy issued.	
	11	" attachment for returned, "attached as per schedule July	

11, 1873," and schedule filed.

Sept. 3 Appearance of defendant by James G. Payne—ordered. (O. B. 3, p. 323)

Oct. 9 Attachment vs. defendant—application for filed.

10 Rule on defendant—ordered (Min. 7, p. 470) for alleged contempt.

Rule on defendant and copy issued.

17 Answer to bill by defendant—filed and appearance of J. G. Payne.

28 Rule on defendant—returned, "not to be found, Oct. 27, 1873."

Rule on defendant—ordered re-issued. (M. 7, p. .)

Rule on defendant—re-issued and copy.

1873, Oct. 31 Answer—Motion of Complt to strike out —filed.

Allowance to complt. and expenece p. 315 —order to issue fi fa fir M.

" 7. S. to complt. and expenses, fi fa issued to wit: $700.

Injunction as prayed in Bill—order to issue—M. 7 p. 515.

" as prayed in bill and copy issued.

Nov. 1. Replication filed.

3. Spa ad test—behalf of complt—issued to 5 witnesses and pricipe filed.

Injunction—returned-served Nov 3, '73.

4 Spa to testify-issued Nov. 3, '73-ret'd Sum'd all except wife of A. Nailor, Jr.

7 Spa to testify behalf of Complt.-issued to

witnesses (12) and precipe (2).

Dec. 16 Spa to testify behalf of complt–returned. Sum'd all (both).

19 Time for taking testimony extended for 30 days—m 8 p 13.

1874. Jany. 6 Spa to testify on behalf complt–for witnesses.

9 Certificate Clerk (2) to Wm. Pettibone and Patrick Sullivan behalf of Complt. issued and entered.

16 Time for taking testimony extended 30 days from date—by consent—m 8 p.

17 Spa ad, teste behalf complt—issued and precipe filed.

Mar. 27 Depositions (16) behalf of complt. and exhibits A & B, 2 pckgs.

June 10 Special Auditor's Report—Filed.

July 7 Divorce. *a mensa et thoro*,—decreed–and alimony ($16,000) per annum—M—8 p., 174:

21 Appeal by deft. to General Term—ordered–O. B. 4 p. 165.

Aug. 13 Alimony Sequestration for—provided—payment not made by 20 inst.–M. 8, p. 214.

21 Alimony Sequestration, writ of–issued.

Nov. 7 Decree General Term–reversing decree. Special term, July 7, '74 and remanded cause, 2 M., G. T., p. 377.

1875. Feb. 23 Injunction to restrain defendant from selling or otherwise disposing of house No. 306 12th st. Sq. 293, petition of sequestration

for, filed, and copy issued.

24 " Returned, "Served on Allison Nailor, February 23, '75.'

1876. " 14 Decree 2d. Divorce *a mensa et thoro* and for alimony. $3,200 per annum. M. 10–p. 353 & copy.

1877. April 11 Alimony reduced from $1600 to $1200 per annum, discharging sequestration, &c., &c., on terms. M. 12, p. 17.

Bond of Allison Nailor to secure alimony at $1200 per year and payment of taxes &c., with deed.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Filed October 31st, 1873.

RACHEL NAILOR *vs.* ALLISON NAILOR } 3282 Equity Docket 11.

On motion of complainant's solicitor, it is this 31st day of October, A. D 1873, ordered by the Court, that a *fieri facias* issue against the lands, tenements and hereditaments of the defendant, to be sold to satisfy a certain order of decree passed in said cause on the 28th day of June, A. D. 1873, and that under said *fieri facias* the Marshal of this court shall first sell the east half of lot No. 9, in Square No. 228, in the City of Washington, being the premises heretofore attached, to wit: the 11th day of July, A. D. 1873, under an order heretofore passed in said cause, and if said premises do not sell for sufficient to pay and satisfy said order so passed on the 25th June, 1873, and the amount due in accordance therewith at the date of sale, then said Marshal shall proceed under said *fieri facias* to sell any of the lands, tenements and heredita-

ments of said defendant until sufficient is realized for said purpose.

A true copy, test:

R. J. MEIGS, *Clerk*
by M. A. CLANCY, *Ass't Clerk.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

[*Filed July 7th. 1874.*]

RACHEL D. NAILOR
vs.
ALLISON NAILOR. } 3,282, Equity Docket 12.

This cause having come on to be heard upon petition, answer and testimony, and having been argued by counsel and duly considered by the court, it is thereupon, this 7th day of July, A. D. 1874, ordered, adjudged and decreed that the petitioner, Rachel D. Nailor, and the defendant, Allison Nailor, be and they hereby are divorced from bed and board.

And it is further ordered, adjudged and decreed that the defendant pay to the petitioner as alimony for her support and maintenance during her life or until the further order of this court to the contrary, six thousand dollars per annum, in equal quarterly instalments of fifteen hundred dollars, upon the seventh day of the months of July, October, January and April, commencing with the day of the date hereof, and that the said annual allowance be and it is hereby made a lien upon the following described property situated in the city of Washington, District of Columbia, and the rents thereof, viz., that part of lot numbered three (3) in square numbered two hundred and fifty-four, according to the ground plan of

said city contained within the following metes and bounds: Beginning at the southeast corner of said lot and running thence westwardly with the line of E street north thirty-two (32) feet; thence north one hundred (100) feet; thence east thirty-two (32) feet, and thence south one hundred (100) feet to the beginning; also the south part of lot numbered twenty-four (24) in square two hundred and fifty-three (253,) according to said ground plan, fronting twenty-two (22) feet ten and a half (10½) inches on Thirteenth street west, extending with that width to the rear of said lot, being generally bounded on the south side thereof by the dividing line between lots numbered ten, eleven and twelve, in square numbered two hundred and fifty-eight, according to said ground plan, except the eastern sixteen (16) feet and one (1) inch of said lot numbered twelve (12;) also lot numbered nine (9) in said last mentioned square; also lot numbered eight (8) in square numbered four hundred and seventeen (417,) according to said ground plan; also the following parts of lots in square numbered two hundred and fifty-five (255,) according to said ground plan, viz., all of lots numbered three and ten in said square, except the west eleven (11) feet front thereof by the depth of the lots, the west fourteen (14) feet two (2) inches front of lot numbered eleven in said square by the depth of said lot, the west half of lot numbered two (2) in said square, except a portion ten (10) feet sqnare in the northeast corner thereof, that part of lot numbered fourteen (14) in said square contained within the following metes and bounds, commencing at a point on 13½ street ten feet from the northeast corner of said lot and running thence south twenty nine (29) feet; thence west seventy-two (72) feet six (6) inches; thence north twen-

ty-nine (29) feet ; thence east seventy-two (72) feet six (6) inches, and that part of the east half of subdivision two (2) and the west half of subdivision one (1) in said square, contained within the following metes and bounds, commencing at a point thirty-six (36) feet from the corner of D and 13½ streets and running thence west eighteen (18 feet and three (3) inches, and running back from said D street fifty (50) feet. And it is further ordered, adjudged and decreed that said petitioner shall have for and during her life the possession and use of the furniture now in said dwelling house hereinbefore described as part of lot twenty-four (24,) square two hundred and fifty-three (253,) where she now resides.

And it is further ordered, adjudged and decreed that the said defendant pay to the petitioner the costs of this suit, and that the petitioner have execution therefor and also for the alimony *pendente lite* now due; that the petitioner's right of dower in the property of the defendant be retained, and that she be at liberty to apply to this court for any further order, direction, &c., that may be necessary and proper to carry this decree into full effect.

And is further ordered that either party may have leave hereafter to apply to the court for a modification of this decree.

A true copy. Test:

R. J. MEIGS,
Clerk.
By M. A. CLANCY,
Ass't Clerk.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Filed August 13th, 1874.

RACHEL D. NAILOR
vs.
ALLISON NAILOR. } 3282, Equity Docket 12.

The defendant having been directed by an order of the court made on the 25th day of June, A. D. 1873, to pay the complainant the sum of one hundred dollars upon the 25th day of each and every month during the pendency of this suit, as alimony *pendente lite*, and having in contempt of court failed to pay the said alimony or any part thereof, for a period of nine months from the 25th day of November, 1873, it is on motion of the complainant's solicitor ordered, that unless the defendant pay to the complainant or her solicitor the sum of nine hundred dollars, being the amount of alimony *pendente lite*, due from the 25th day of Nov., 1873, to the 25th day of July, 1874, inclusive, and also the costs of this proceeding, on or before the 20th day of the present month, a writ of sequestration issue out of and under the seal of this Court directed to George W. Phillips, giving him full power and authority to enter upon all the messuages, lands, tenements and real and personal estate whatsoever of the said defendant, and to take, collect, receive and sequester into his own hands all the rents and profits thereof, and to detain and keep the same under sequestration in his hands or pay the same in such manner and to such persons as the Court shall appoint until the said defendant shall clear his said contempt and this Court shall make an order to the contrary.

And it is further ordered that said Phillips from said rents and profits first collected by him shall pay to the

complainant in this case as the same may be collected the sum of nine hundred dollars.

A true copy.

Teste: R. J. MEIGS, *Clerk.*
By M. A. CLANCY, *Ass't Clerk.*

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

Filed Nov. 7, 1874.

RACHEL D. NAILOR, Complainant,
vs.
ALLISON NAILOR, Defendant. } In Equity. No. 3282.

This cause having been heard upon the defendant's appeal from the decree of the special term in equity of July 7, 1874, and the same having been argued by Mr. Peter for the appelant and by Mr. Merrick for complainant, it is, after careful consideration thereof, ordered, adjudged, and decreed that the said decree be, and the same is hereby, reversed, and that the cause be remanded to the special term for further proceedings therein.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Filed Feby. 23, 1875.

RACHEL NAILOR
vs. } 3282. Equity Docket 12.
ALLISON NAILOR.

Upon consideration of the petition of George W. Phillips, sequestrator in the above-entitled cause, filed this 23d day of February, 1875, it is ordered by the court that an injunction be issued restraining the defendant, his agents and attorneys, from selling or in any manner disposing of house No. 306 Twelfth street northwest, in square No. 293, in the city of Washington.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Filed April 11, 1877.

RACHEL D. NAILOR
vs.
ALLISON NAILOR. } 3,282. Eq. Doc. 12.

This cause having come on to be heard upon the motion of the defendant for a modification of the decree heretofore entered in this cause on the 14th day of February, 1876, and for a reduction of alimony thereby allowed, and having been argued by the counsel of the respective parties, it is thereupon, this 11th day of April, 1877, ordered, adjudged and decreed that the decree heretofore entered in this cause on the 14th day of February, 1876, be and the same is hereby modified, so that the defendant shall, from and after the 1st day of April, 1877, pay to the complainant during their joint lives a yearly allowance of $1,200, instead of $1,600, as alimony for her support and maintenance, in equal quarterly instalments of three hundred dollars, payable on the first days of July, October, January and April of each and every year, commencing with the present year, the defendant having secured to the complainant by a sufficient deed, approved by the court, during the joint lives of herself and the defendant the house and lot known as the south twenty-two (22) feet ten (10) inches from front to rear of lot numbered twenty-four (24,) in square numbered two hundred and fifty-three (253,) in the city of Washington, and the furniture belonging to him at present contained in said house, and having given bond to pay all taxes and encumbrances existing on said house and lot on the 1st day of April, 1876.

It is further ordered that all injunctions heretofore granted in this cause be and the same hereby are dis-

solved and vacated, and the order of sequestration heretofore made in said cause be and the same hereby is vacated, and the sequestrator is hereby directed to place the defendant in possession of the sequestered property.

It is further ordered, adjudged and decreed that the complainant shall pay all taxes and assessments levied on said house and furniture subsequent to said 1st day of April, 1876, and in the event of her failure to pay such taxes and assessments at maturity, then the defendant shall have leave to pay them and deduct the amount so paid by him from the alimony of the complainant.

It is further ordered that the sequestrator pay over to the defendant or his attorney the money now in his hands collected from rents of defendant's property, after paying the costs remaining due and unpaid.

A true copy. Teste :

R. J. MEIGS,
Clerk.

By M. A. CLANCY,
Ass't Clerk.

FILED
MAR 30 1886
JAMES H. McKENNEY,
CLERK

118-127

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

CATHARINE CONLEY, *Appellant,*

vs.

RACHEL D. NAILOR *et al.*

Brief for Appellant.

W. D. DAVIDGE,
IRVING WILLIAMSON,
For Appellant.

R. O. Polkinhorn & Son, Printers.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1885.

CATHARINE CONLEY, *Appellant*,

vs.

RACHEL D. NAILOR, *et al.*

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Brief for Appellant.

STATEMENT OF THE CASE.

Allison Nailor, senior, a resident of the City of Washington, died in said city on the 6th of January, 1879. (Record, page 1.) During his life he was the owner of considerable real estate in said city, consisting of various houses and lots, and also of several valuable farms in the County of Montgomery, State of Maryland, and about the year 1870, the real estate so owned and possessed by him, was worth the sum of *one hundred and fifty thousand dollars, besides considerable personal property owned by him.* (Bill, Record, p. 1.)

During his life he executed and acknowledged three trust

deeds, whereby he conveyed to Catharine Conley, the defendant below, certain real estate situated in said city, and also in Montgomery County, Maryland, *in trust* for the use and benefit of two of his illegitimate infant children, namely, Willie Ernest Nailor and Mary Edna Nailor. He also executed another deed conveying in fee simple to said Catharine Conley certain other real estate in Montgomery County for her own use. (R., 2, 3.)

The first trust deed was made November 27th, 1872, (more than six years before his death), and recorded May 27th, 1873. (R., 2.) It conveys the property therein described, being a little lot of inconsiderable value on 14th street, southwest, fronting *fifteen feet* on south 14th street, by a depth of one hundred feet and one-half inch, to Catharine Conley, to hold *in trust* for the sole and separate use of Willie Ernest Nailor, who is described in the deed as the infant son of the grantor and said Catharine Conley, she to receive the rents and profits, and apply the same to his support and education; and when he becomes twenty-one years of age, the deed provides that the trust shall cease, and the title in fee simple shall be in said Willie absolutely. The deed further provides that should said Willie die before attaining the age of twenty-one years, or should die before having disposed of the premises, that then the title in fee simple should vest absolutely in said Catharine Conley. (R., 2, 8, 9.)

The second trust deed was made March 29, 1878 (more than nine months before Mr. Nailor's death), and was recorded April 2, 1878. (Exhibit B, R., 1.) It is erroneously stated in the bill that this deed bears date on the *19th* of March, instead of the 29th. (R., 2.) The real estate therein described consists of parts of lots 11 and 12, in square 258, in said city, fronting on D street, between 13th and 13½ streets, south of Pennsylvania avenue, and also parts of lots 2 and 20, in square 293, in said city. The

part of lot 2 fronts on C street, between 12th and 13th streets, south of Pennsylvania avenue, and the part of lot 20 fronts on 12th street, south of the avenue. It conveys the property described to said Catharine Conley *in trust* for the sole and separate use of said Mary Edna Nailor, who is described in the deed as the infant daughter of the grantor and said Catharine Conley, and the trusts, limitations, and uses are similar to those contained in the first described trust deed. (R., 2, 3, 9–11.)

The third trust deed was made March 29th, 1878 (the same date as the second), and recorded April 5th, 1878. (R., 3, Exhibit C; R., 11–13.) It conveys the property therein described—namely, two tracts of land, containing in the aggregate about 130 acres, situated in Montgomery County, Maryland—to said Catharine Conley *in trust* for said infant child, Willie Ernest Nailor. The trusts, limitations, and uses are similar to those contained in said first described trust deed. (R., 11–13.) A certified copy of this deed was filed with the bill, made a part of it, and marked "Exhibit C," but it is erroneously described in the first clause of paragraph 9 of the bill. (R., 3. See Exhibit C, R., 11–13.)

The fourth deed was made March 29th, 1878 (the same date as the two preceding deeds,) and recorded April 5th, 1878. (R. 3, Exhibit D., R. 14, 15.) It conveys the property therein described, namely, about 100 acres of land in said Montgomery County, (another of the grantor's farms), to said Catharine Conley in fee simple, for her own use. (R. 14, 15.) A certified copy of this deed was also filed with the bill, made a part of it, and marked Exhibit D, but it is erroneously described in the second clause of the 9th paragraph of the bill, (R. 3. See Exhibit D, R. 14, 15.)

Willie Ernest Nailor was born on the first of November, 1872, and died August 6th, 1878; and Mary Edna Nailor was born Oct. 28th, 1876, and died August 8th, 1878, (Stipulation, R. 24.)

On the 27th of February, 1879, the complainants below, namely, the widow of Allison Nailor, senior, and all his heirs at law, except Allison Nailor, junior, and the husbands of the female heirs, filed a bill in the court below against said Catharine Conley, alleging that said four deeds, and each of them, had been procured by the fraud and undue influence of said Catharine Conley, and that at the time said Allison Nailor, senior, made them, and each of them, he was insane, incapacitated and incompetent to make them; and they pray that the two deeds conveying real estate situated in said city be declared null and void, and be delivered up and cancelled, (R. 1–6.)

The defendant below, in her answer to the bill, denies, among other things, that there was any fraud or undue influence in the making and execution of said deeds, or either of them, and she denies that at the time Allison Nailor, senior, made them and each of them, he was insane, incapacitated or incompetent, but, on the contrary, she avers that at the time each was executed he was in possession of all his faculties, and entirely competent to enter into the most binding contracts, and that they were made at his own suggestion, and were not proposed, demanded, or procured by any representations, fraud, undue influence or duress on the part of the defendant. (R., 17–21.) She further avers that at Mr. Nailor's solicitation, she first departed from the paths of virtue, and had by him four children. (R., 18.) The defendant further says that no decree of binding force can be passed in the cause, as Allison Nailor, junior, one of the heirs at law, is not a party to the cause, and she prays that she may have the same benefit and advantage as though she had demurred to the bill. (R., 21.)

On the 19th of April, 1879, issue was joined on the bill and answer. (R., 22.)

On the 14th of January, 1881, after the testimony in the cause was closed on both sides, and the cause calendared for

hearing (R., 22), the complainants below filed a petition for leave to amend the bill, and the court, on the same day, granted leave to amend by making Allison Nailor, junior, (one of the heirs) a party, and to amend the prayer of the bill so as to pray for the setting aside and annulling *all* the deeds mentioned in the bill, and accordingly, on the same day, the amendments allowed were filed by the complainants. (R., 23.)

On the same day, January 14th, 1881, Allison Nailor, Jr., filed his answer to the bill and its amendments, alleging that he claimed no interest in the property in controversy, as he had during the life-time of his father received advancement, which advancement, he had since his death elected to retain, and he disclaims all right and interest as an heir-at-law. (R., 23, 24.)

At the January Special Term, 1881, the cause came on to be heard, and on the 26th of January, 1881, the Court in Special Term passed a decree adjudging that the deed made by Allison Nailor, Sr., to the defendant, Catharine Conley, in trust for the child mentioned therein as Willie Ernest Nailor, bearing date on the 27th day of November, 1872, and the three deeds made by the said Allison Nailor Sr., to the said Catharine Conley on the 29th day of March 1878, one for her own benefit, one in trust for the child mentioned therein as Willie Ernest Nailor, and the other for the benefit of the child mentioned therein as Mary Edna Nailor, be, and each, and all of said deeds are hereby declared illegal, null and void, and set aside and held for naught. (R., 25.) The Court further ordered and adjudged that the said Catharine Conley do within thirty days from this date make, execute, acknowlege, and deliver to the complainants, Washington T. Nailor, Lizzie Trimble, and Frances M. Clarke, two quit-claim deeds, one embracing the real estate mentioned in the bill situated in Washington, District of Columbia, and the other embracing the real estate

mentioned, situated in the County of Montgomery and State of Maryland, conveying to said complainants all the right, title and interest which she had or has in said real estate by virtue of said deeds, and in case the said Catharine Conley shall fail to make and deliver such deeds within the thirty days aforesaid, then Chas. C. Cole, who is hereby appointed trustee for the purpose, is hereby authorized and directed to make such conveyances on behalf of the said Catharine Conley. (R., 25.)

From this decree, the defendant appealed to the court in General Term, which appeal was allowed. (R., 26.)

The cause was heard in the General Term upon the appeal, and the court in General Term rendered the following final decree:

"This cause came on to be heard at the present term, and was argued by counsel; whereupon, upon consideration thereof, the court here is of opinion that there is no error in the decree of the said Special Term appealed from, of the 26th day of January, 1881, but that so much of said decree as directs the defendant to reconvey said property, mentioned therein, and appointing a trustee to make such conveyance in case of her failure to do so, is unnecessary.

"It is, therefore, this 23rd day of February, 1882, ordered, adjudged, and decreed that said decree be, and the same is hereby modified by striking therefrom said requirements.

"And it is further ordered, adjudged and decreed that the said decree so modified be, and the same is hereby, affirmed with costs." (R., 27.)

From this decree the defendant, Catharine Couley, prayed an appeal to the Supreme Court of the United States, which was allowed. (R., 27.)

Assignment of Errors.

1. The court below, in General Term, erred in rendering its final decree. (R., 27.)

2. The court, in General Term, erred in its decree in declaring there was no error in the decree of the Special Term. (R., 27, 25.)

3. The court, in General Term, erred in its decree in adjudging that the decree of the Special Term, as modified by the General Term, be affirmed. (R., 27, 25.)

4. The court in General Term erred in its decree in adjudging that the deeds described in the decree of the Special Term be, and each and all of them are declared illegal, null and void, and set aside and held for naught. (R., 27, 25.)

5. The court erred in setting aside and cancelling the deed dated November 27, 1872. (R., 8, 9.)

6. The court erred in setting aside and cancelling the three deeds dated March 29, 1878. (R., 9, 15.)

Argument.

The Evidence.

Although the testimony in this cause is painfully voluminous, embracing 370 pages of the printed record, yet all the material facts elicited by it may be compressed in a comparatively brief statement. Indeed, the bulk of the testimony, especially on behalf of the complainants, is either immaterial, irrelevant, or merely cumulative upon unimportant points. The cross-examinations of the defendant's witnesses are attenuated to the last degree of exhaustion.

Allison Nailor, senior, made a large fortune by *livery stable keeping, buying and selling negroes*, speculations in real estate, farming, &c. (R. 85, 53, 365). It is alleged in the bill that the real estate owned and possessed by him about the year 1870 was worth $150,000, besides which he

owned considerable personal property, (R. 1.) He died on the 6th of January, 1879 (R. 1); and at the time of his death was about 63 or 64 years old (R. 61, 206). Mr. Nailor had some good traits of character and was endowed with strong sense and uncommon ability and aptitudes for the successful management of business, yet, during the time he was making and accumulating his property, *and certainly from a period antecedent to the year 1854*, (more than 18 years before the execution of the first trust deed), he was a man of dissolute life with women, and a man who sometimes drank freely and sometimes got intoxicated, yet, neither his immoralities with women, nor his drinking, seriously impaired his ability to attend to business, or his mental faculties, and the allegations in the bill that he was unduly influenced or controlled by the defendant is not at all supported by the proofs. In fact, during his active business life, and up to the time of his death, he was self willed, resolute, defiant and independent, and could not be unduly influenced or controlled by any one. A portion of the property which he acquired consisted of houses south of Pennsylvania avenue between 12th and 14th streets, which were leased to disreputable tenants, or as drinking places (R. 58), and no doubt his business associations with these people largely directed his dissolute tastes and modes of life.

His son, Washington T. Nailor, one of the complainants, testifies as follows:

"My father had ten or twelve or more houses belonging to him that were rented as houses of prostitution, or as drinking places, and when he went on sprees, I would find him in first one place and then the other; and also in other places not belonging to him." (R., 58.)

He further testifies that his father lived in Montgomery County, Maryland (about 8 miles from Washington), *from about the year 1854 or 1855 to 1861 or 1862*, but during that

time transacted business in the city. (R., 54, 55.) He lived in Washington for fifty years *with the exception of the time he lived in Montgomery County.* (R., 55.)

He further testifies:

"I have known mother not only one time, but hundreds, to go after him and get him out of the commonest drinking places in town; also to houses of prostitution; and I have often known her to come, *when they lived in Montgomery County, Maryland*, eight miles, and drive here to the city at nights, both in winter and summer, and find him in some low place, and take him and drive back to the farm with him; sometimes she would come by herself, and sometimes with some member of the family; and it was about the same when living in this city, *previous to our living in Montgomery County*, and also since we returned from the farm and have lived here, and up to the time that he left home for good." (R., 54.)

Thus it appears, from the testimony of this witness, that *as far back as 1854 and previously* Mr. Nailor was addicted to drinking, going on sprees, and visiting houses of prostitution; yet the witness testifies:

"*Question.* State whether he was, at any time during his life since you can remember, an active, energetic business man, and up to what time he continued such?

Answer. Up to the year 1862 or '3, I don't think there was a smarter or more shrewd business man in Washington, except when he was on these sprees I have spoken of." (R., 53.)

Joseph H. Hilton, one of *complainants'* witnesses, testifies that he knew Mr. Nailor *intemately for 35 to 40 years;* when he was a boy he worked for Mr. Nailor; in manhood he dealt with him, and did business for him. He says:

"All through my life from the time I first knew him (35 or 40 years ago), up to the time of my last visit to him in 1878, *he would yet on sprees*, wander away, and make his

wife unhappy at home. When I was a boy, working for him, she used to get me and others to go out and look him up. *That was 35 or 40 years ago.*" (R. 115, 116). I knew him when he was a reputed dealer in slaves. (R. 117.)

Job W. Augus, another of *complainants'* witnesses, testifies that he knew Mr. Nailor for 25 years before his death, and knew him *intemately* until 1873, and that he drank to intoxication *most frequently in 1862, 1863 and 1864, up until* 1870. (R. 113.)

So it seems that notwithstanding his dissolute course and drinking habits, Mr. Nailor continued to be, *for many many years afterwards*, a smart, shrewd business man.

W. T. Nailor further testifies that, in his opinion, his father was not mentally competent on the 27th of November, 1872, of making and comprehending the conveyance of that date, and that, on the 29th of March, 1878, he was not mentally competent to make the conveyances executed on the last mentioned date, or of transacting and fully comprehending important business (R., 56); yet he admits that, *during the last year of his father's life* (*i. e.*, in 1878)—

"*I got a thirty years' lease from him on the stables I now occupy, for fifty dollars a month and the taxes.*" (R., 61.)

Strange way to act towards a man who was incompetent of transacting important business!

By entering into this contract of lease the witness and his co-plaintiffs, who are *jointly* interested with him, ought to be *estopped* from denying that Mr. Nailor was competent to make an important contract relating to real estate at some period during the last year of his life.

Upon cross-examination this witness testified as follows:

Question. How often did you see your father *during the last year of his life?*

Answer. Nearly every day he was out.

Question. Do you remember your father coming to see you at your place of business?

Answer. I do, sir.

Question. How frequently would he make those visits, and how long would he stay?

Answer. It is impossible for me to state now; I made no memorandum of his visits. He was very friendly to me *the last five or six months before he died.*

Question. Did you have any business transactions with your father *during the period referred to in your last answer?*

Answer. I did, sir.

Question. What was the reason of your discontinuing to act as your father's agent?

Answer. Because he objected to my giving money that I collected of his to my own mother. (R. 59, 60.)

* * * * * * * * *

Question. When your father was not drinking was he not of a kind and pleasant disposition, and what was his character when intoxicated? *Answer.* He was quite a different man *when sober*, and had it not been for his drinking and keeping low company, *he would have been as good a man as any one* (R., 59.)

It is thus admitted by this complainant, that his father was *sometimes sober*, and then he was quite a different man. This fact is to be kept clearly and constantly in mind when examing the record. We propose to show, beyond cavil, that Mr. Nailor was *perfectly sober* when he gave directions in 1877 for the preparation of his will, when he executed the will, so prepared, on the 31st of December, 1877 (R., 231), and when he executed the three deeds in controversy, dated March 29, 1878, *conveying* the same property devised in the will to the same beneficiaries.

This witness further testifies that he supposed the property described in the first trust deed, dated Nov. 27, 1872, was then worth $3,000; and that the property described in the second deed, in trust for the child, Edna, was worth $11,000, and that the property in Montgomery County, des-

cribed in the two other deeds of March 29th, 1878, was worth together about $10,000, making a grand total of $24,000. (R., 56, 57.)

These values are much over estimated; but, even if they were correct, they show that the property conveyed absolutely to the defendant *for her own use* was worth *less than $5,000*, as she received less than one half of the land in Montgomery County, described in the two last deeds mentioned, and *all* the property described in the four deeds *is subject to the dower of the widow.* (R., 21.)

We may here remark that Mrs. Nailor *is not a proper party to the bill.* Her dower right is not called in question.

It thus appears that the value of all the property conveyed in the four deeds was *less than one sixth of the real estate owned by Mr. Nailor in 1870* (R., 1); and all of it was subject to the wife's dower, and it also appears that more than four fifths of the property thus conveyed was to be held in trust for his two infant illegitimate children, and that less than one-fifth so conveyed was given *absolutely* to the defendant. Surely this was not an unreasonable settlement, however, reprehensible the conduct of Mr. Nailor and the defendant may have been.

The record does not disclose the value of Mr. Nailor's property *at the time of his death*, exclusive of that conveyed in the four deeds. This witness, as one of the heirs and next of kin, was questioned as to its value at that time. He replied that he could not state without investigation, but would do so at some future time (R., 57), *but the information was not furnished.*

Two more of the complainants were examined as witnesses on behalf of the complainants, *and only two*, namely, Matthew Trimble, the husband of Rachel Elizabeth Trimble, a complainant, and one of the heirs, and James W. Clarke, the husband of Frances M. Clarke, also a complainant, and one of the heirs. (R., 62, 38.)

Upon the testimony of Mr. Trimble, we do not deem it necessary to dwell He testifies that he made Mr. Naylor's acquaintance in 1865 (R., 62), and that *Mr. Naylor left his (Mr. Nailor's) home permanently in the winter of 1870.* (R., 62.) As might be supposed, he is of opinion that, by drinking and habits of intoxication, Mr. Naylor had, in the fall of 1870, become "very much demented and almost childish in his manner" (R., 65), and that, in 1878, he would have been "unwilling to invest any deed or purchase from him." (R., 65)

The witness, James W. Clarke, resides in Texas. He says, upon cross-examination:

"I was arrested about January, 1869, while in Washington, on leave of absence, on a charge which, I believe, was maliciously brought, of obtaining money under false pretences. I gave bond at once, and Mr. George Hall was not one of my sureties. I remained in Washington until the charge was disposed of, all of the time demanding trial, which was constantly postponed at the instance of the prosecution until it could not longer be denied me and the charge proved groundless and I was discharged. My bail was not forfeited, and Mr. Allison Nailor, Sr., nor anyone else, had to pay it for me. He was not angry with me at all, but, on the contrary, was my warmest friend, and denounced the prosecution against me as a malicious outrage from the commencement, *and about a year afterwards gave me entire charge of his business.* So far from my standing in the Government being implicated, I was then holding a position of $3,000 a year, and the Secretary of the Treasury extended my leave until the matter was settled." (R., 43, 44.)

This witness lived in Washington at intervals from August, 1862, to May, 1873, when he left this city, and has ever since been absent. (R., 38.) He made the acquaintance of Mr. Nailor in 1864 (R., 38), and had the management of his estate and business, collections of his rents, &c., from the spring of 1870 until late in the fall of 1872.

(R., 38.) *At the request of Mr. Nailor* he entered upon the management of his property and business. (R., 38.)

He testifies as follows:

"When I first knew Mr. Nailor (in 1864) he was addicted to occasional sprees, *but was a good business man*, and, as far as I observed, in good health. *He was an habitual user of intoxicating drinks.*" (R., 39.)

He further says:

"At other times, *when he was perfectly sober, he would be rational and a competent business man. This was during the earlier period of our connection* (*i. e.*, in 1870; this connection was formed in 1870). (R., 38.) And on similar occasions *afterwards* he manifested a strong desire to sever his connection with Mrs. Conley and her set, and to have it arranged for his return home, but would relapse before anything could be done." (R., 40.)

Yet, Mr. Trimble testifies that in the fall of 1870 Mr. Nailor had become "very much demented." (R, 65.) Quite a diversity of opinion.

The witness was asked:

"*Question.* State whether, in your opinion, Mr. Nailor was competent in the fall of the year 1872 to transact understandingly important business, such as conveying or making a disposition of his real estate?"

Answer. I do not think he was, *though he would have been* if separated from the influence of liquor, under which he was held, and been allowed time for the restoration of his faculties, with proper treatment and abstinence from intoxicating liquors; as it was, he would not." (R., 40, 41.)

Having thus disposed of the testimony of the witnesses who are parties complainant *and interested in the cause* we will proceed to consider the evidence for the defendant, and will then review the remaining evidence for the complain-

ants. Before doing so, however, we desire to call attention to the testimony of one other of the complainants' witnesses, *Dr. Charles M. Hammett*, a physician who attended Mr. Nailor professionally in his last sickness, in January, 1879, and who also attended him in January, 1878, one year previously, and on one or two other occasions (R. 396–398). This witness was questioned by the complainants' counsel about the character of Mr. Nailor's sickness in *January, 1878*, and also whether during that sickness he witnessed Mr. Nailor's signature to a will, and also whether he remained sensible in his last sickness in 1879 up to the time of his death, but the counsel *studiously avoided* asking any questions as to Mr. Nailor's soundness of mind or competency to make contracts, or to manage his affairs.

Upon cross-examination the witness said that the affidavit, marked Exhibit C. C., No. 10, was *in his handwriting*. Counsel for complainants *objected* because the witness had not testified in his direct examination *as to any of the matters stated in the affidavit* (R. 398). The affidavit was sworn to *after the commencement of this suit*, and is as follows:

Exhibit C. C. No. 10.

DISTRICT OF COLUMBIA, } *ss:*

C. M. HAMMETT, being duly sworn says, that he is a physician in active practice, residing at No. 644 F St., S. W., in the City of Washington, D. C.; that he was acquainted with Allison Nailor, Sr., deceased; that he was first called to prescribe for him *in the month of April*, 1874, and that he attended him professionally thereafter, and had every opportunity of judging of his mental condition; that in the opinion of this deponent said Allison Nailor was a man of sound mind and entirely competent in all respects to manage his own affairs; that from his frequent opportunities of judging thereof, had the contrary been the case, he would have known it; that on one occasion in July, 1878, he

directed that the medicine he prescribed for him should be taken in one ounce of brandy three times daily; that this deponent never saw the said Allison Nailor under the influence of liquor; that in his opinion, based on his professional attendance, said Allison Nailor was a man of clear mind and judgment.

C. M. HAMMETT, M. D.

Sworn to before me this 7th day of March, 1879.

{ NOTARIAL SEAL. }

A. E. KEESE,
Notary Public.

(R. 402.)

Here it may be stated that the open and known relation of Mr. Nailor with the defendant ostracized her, and made it almost impossible for her to collect the testimony required for her defence. If this relation had not existed can it be doubted for a moment but that this witness would have willingly testified to the facts stated in his affidavit?

Before proceeding to consider the evidence for the defendant, we desire also to state the circumstances under which Mr. Nailor became acquainted with her, and her situation in life before that acquaintance, *as disclosed by the complainant's testimony.*

Mr. Nailor left his home permanently in the winter of 1870 (R. 62), and lived and co habited with the defendant from that time in different houses in Washington until the time of his death (R., 49, 50.) About one year previous to leaving his home, namely, in November, 1869 (R., 149–50), he made the acquaintance of the defendant.

The first illegitimate child, Willie Ernest Nailor, was born on the 1st of November, 1872 (R., 24), and the first deed for the child's benefit was made November 27, 1872, (R., 8). The child Mary Edna was born October 28, 1876, and the deed for her benefit was made March 29, 1878 (R., 8). It was the *settled purpose* of Mr. Nailor to provide for

these children, and he expressed it constantly to different persons at different times, as will hereafter appear.

Catharine Conley was an Irish servant girl (R., 155, 151), and when she first met Mr. Nailor was about twenty-one or twenty-two years old (R., 233). Early in the spring of 1869, she was hired as a servant in the family of Mr. James S. Topham (R., 154), a respectable merchant of this city. She left there in August or September, 1869. (R., 154–5.) In November, 1869, she was living at Mrs. Bailey's on K street, between 17th and 18th streets, northwest (R., 149), *where she made her home when she was not in service* (R., 151).

Mrs. Harriet Schofield first met the defendant at Mrs. Bailey's about one year before she introduced her to Mr. Nailor (R. 149, 150). In November, 1869, Mrs. Schofield was living with her husband on Delaware avenue, *northeast of the Capitol*, and the defendant was living at Mrs. Bailey's in *the northwest part of the city, one mile and a half away*, (R. 154). Mrs. Scofield and her husband were then keeping house on Delaware avenue, and no one else was living with them.

Mrs. Scofield testifies substantially as follows:

I first met Mr. Nailor fifteen years ago (*i. e.* in 1864). My husband and myself then rented a house from him. I met him there; I have known Kate Conley about eleven years, (*i. e.* since 1868). I first met her at Mrs. Bailey's, and was afterwards introduced to her at Mr. Dave Roache's, on K street, between Seventeenth and Eighteenth streets. Mrs. Bailey then lived on the same street with Mrs. Roach, there or four doors from her (R. 149).

Mr. Nailor first met Kate Conley at my house in November, 1869. (R. 149, 150.) *Mr. Nailor was after me to get him a girl.* I went to Bailey's and saw Kate Conley there and told her that Mr. Nailor wanted to see her, and asked her if she would come, and she said she would when she got ready. I told her what Mr. Nailor wanted with her. She got ready and came with me; we then went to my house on Delaware avenue, between C and D streets; it was Saturday

evening when we went together to my house, and she saw Mr. Nailor on the following Monday at 10 o'clock A. M. (R. 150.)

Question. How long did you know Kate Conley at the time yonwent for her?

Answer. One year, about.

Question. When Mr. Nailor told you that he wanted you to get him a girl, did he ask you to get him Kate Conley?

Answer. No, sir.

Question. Did he ever mention her name to you before you got her to come to your house, as you have stated?

Answer. No, sir; *they were both strangers.* (R. 150, 151.)

The witness further testified:

She came to my house in November, 1869, and remained until the first of March following. (R. 150.) Mr. Nailor saw her privately on the Monday following the Saturday she came to my house. Mr. Nailor said he would pay her board if she could stay with me. He stayed at my house at nights and occupied the same room with Kate Conley. (R. 150.)

Upon cross-examination this witness was asked:

Question. How long did you know Kate Conley before she came to your house?

Answer. Between one and two years.

Question. What was her character for chastity and virtue up to that time?

Answer. I knew nothing about it.

Question. You say that Kate Conley claimed that Mr. Nailor seduced her; was that the fact?

Answer. I could not swear to it, *but I believe he did.* (R., 152.)

Question. What motive induced you to procure Kate Conley for Mr. Nailor?

Answer. He asked me to get him a girl *several times*, and then I went and got this girl for him.

Question. What were you paid or promised for doing so?

Answer. I was neither promised or paid.

Qnestion. Did you procure women for other men before or since?

Answer. No, sir.

Question. You thought and believed Kate Conley to be a virtuous moman at that time, did you not?

Answer. I think she was. (R., 153.)

The husband of Mrs. Schofield was also examined as a witness for the complainant, and testified:

That no one but himself and his wife resided at their house on Delaware avenue ~~except Kate Conley~~ (R., 157, 158), and that Mr. Nailor would come there *sometimes sober* and sometimes intoxicated (R., 157, 158). He further says that he first became acquainted with Kate Conley at Mrs. Roach's on K street, in June or July, 1869, where she was visiting the sisters of Mr. Roach, and that he next saw her at his house in November, 1869, when she came there with his wife" (R., 155, 156.)

Question. Who introduced your wife to Kate Conley, or through whom did they become acquainted?

Answer. Either Miss Roach or Mrs. Bailey.

Question. What impresses so distinctly upon your mind the day upon which Kate Conley came to your house?

Answer. Because I objected so strongly to her coming, and the trouble it afterwards brought.

Question. To whom did you express that objection, and when?

Answer. To my wife before and at the time she went after her.

Question. Then you had discussed the matter before your wife went after her?

Answer. Yes, sir.

Question. How often?

Answer. Probably half a dozen times.

Question. Why was Kate Conley selected?

Answer. That I don't know; I didn't select her.

Question. You knew for what purpose your wife was going on that Saturday you have spoken of?

Answer. I did.

Question. What inducement did you receive to consent to such a thing?

Answer. None at all; it was without my consent.

Question. Under what obligations, if any, were you or your wife to Mr. Nailor?

Answer. None that I know of.

Question. Had any such thing occurred at your house before that time, or has it since?

Answer. No.

Question. How long had you known Mr. Nailor before 1869, before Kate Conley came to your house?

Answer. I first knew him in 1869, about three months before she came to my house.

Question. You knew he had a wife and children?

Answer. I had heard so (R., 158).

Mrs. Schofield says she thinks Kate Conley was virtuous when she went for her in November, 1869. She also says she told Kate when she went for her what Mr. Nailor wanted with her; but she does not say how many antecedent conversations she had had with her about Mr. Nailor, if any, or whether she had or had not antecedently pursuaded or enticed this poor young girl, who at that time was out of employment to sacrifice herself by becoming Mr. Nailor's mistress. Mr. Nailor had asked Mrs. Schofield *several times* to get him a girl, and she and her husband had "discussed" about Kate *half a dozen times before* Mrs. Schofield went for her.

The proof shows that the defendant was a well behaved, decent, respectable girl *before she met Mr. Nailor*, and there is no evidence whatever in the record to show the contrary. Mr. Nailor said, several years later, that she was *innocent* when he took her. (R., 269.)

Evidence for the Defendant.

We will assume there will be no question as to the validity of the deed *dated November* 27, 1872. (R., 8.) The property conveyed in this deed is hardly of sufficient value to repay this poor woman for the costs of this oppressive suit. Even some of the complainants' witnesses draw a distinc-

tion between the capacity of Mr. Nailor to convey in 1872 and in 1878, as will hereafter appear. (R., 96.) Our attention will therefore be principally directed to the three deeds dated March 29, 1878. As to the charge of *undue influence* exerted by the defendant, *there is no proof to support it.* The only influence exerted by her was that legitimately springing from her kind and gentle deportment and conduct towards him, by working for and administering to his comforts, and by nursing him in sickness. *There is no evidence* showing that she persuaded, or attempted to pursuade him to make the deeds in controversy. The property given to her *directly* was not more worth than $5,000, one-thirtieth of the real estate owned by him in 1870. The rest was given to her upon the remote contingency that she should out live her two children.

We will, therefore, consider, principally, the question as to Mr. Nailor's *mental capacity* to make the three last-mentioned deeds.

These three deeds were acknowledged before Mr. Nicholas Callan, a notary public of the city of Washington, and were signed by Mr. Nailor in his presence.

He went *alone* to Mr. Callan's office, and *signed* and acknowledged them there. (R., 207–211.) Mr. Callan was, at the time his testimony was taken, a notary public, and also *Treasurer for the county of Washington.* He testifies substantially as follows:

I knew Allison Nailor, Sr., forty odd years. I have seen and conversed with him very frequently. I conversed with him during the last few years of his life upon the subject of executing deeds. (The witness is shown the three deeds.) These deeds were acknowledged at my office, 1422 F street. On the day they were acknowledged I conversed with Mr. Naylor. *His mental condition was perfectly good on that day. He was on that day perfectly sober*, and showed no signs of intemperance. He came for the purpose of executing these deeds. I always regarded Mr. Nailor as an unedu-

cated man, but an active, enterprising business man. He was generally understood to be an enterprising, active, business man, *close in his dealings*. I have frequently heard his character discussed all over the ward where we lived. In my judgment he was capable of executing such contracts on the day he did so before me." (R., 207–208.)

Cross-Examined:

I have been and am now besides a notary, commissioner of deeds for various States, *and clerk and treasurer of the County of Washington.* I saw very little of Mr. Nailor after I heard he had left his family. During the last four or five years of his life, I certainly spoke or talked to him four times; I do not think it was much oftener. When I first knew Mr. Nailor he was an active business man. There was a very material change in his latter days. From a very robust, active man, he became a mere skeleton; completely worn out; he could hardly speak intelligibly. I found him in that condition on each of the times I saw him; I stated four times, but I can now say five times, certainly; these occasions ran from the time he left his family up to the time of his death. On one of the five occasions—the first, I think, after he had left his family—I met him at the City Hall. He was seated in a buggy. He appeared so feeble and emaciated that I offered my services to help him out of the carriage. *He declined my aid*, and spoke of his reverses and bad health. On another occasion I visited him officially at the house of his son Allison. I went there to take his acknowledgment to a deed. He spoke of our long acquaintance and the certainty of his dissolution before long. I can't fix the dates of these conversations. This was probably two years before he acknowledged before me the three deeds in controversy in this suit. I took the acknowledgment of a deed to somebody at that time. Another occasion was at his house in South Washington, on 13th street. I went there with a Mr. McCabe, who was employed in the Quartermaster-General's Office, to take an acknowledgment to to a deed to McCabe. Mr. Nailor was then reclining on a sofa quite feeble, and unable to execute the deed in consequence of his infirmities. He remarked that he would examine the deed, and if it was all right would call at my

office some day afterwards, but never called. The last occasion my office was over the National Metropolitan Bank, probably fifteen steps from the door to my office, and he complained very much of having to climb up these steps; and he came to me because I always attended to such business for him. He complained that climbing up the steps completely exhausted him. He came to acknowledge three deeds—I presume the three in controversy in this cause. The three deeds all bore the same date. *He came alone.* I don't know, *but I presume he signed the three deeds in my presence.* The deeds were all prepared when he came there. In the deed recorded in liber 882, folio 408, the date in the first part of the deed is in my handwriting, and in the certificates, the dates, my name and my seal, and my name as subscribing witness, are also in my handwriting. This is also true of the deed recorded in E. B. F. No. 17, folio 104. This is also true of the deed recorded in liber E. B. F., No. 17, folio 406. The deeds were not read over. I did not know who they were to—he did not tell me. We had no conversation about the propriety of making them. He never asked my advice about making them. I am quite certain that these deeds were all executed on the same day. I remember that a day or two after their execution, Mr. Allison Nailor, junior (the son of Mr. Nailor) spoke to me about one deed, and I said: "No, Allison, there were three." *Mr. Nailor did not seem to be under the influence of intoxicating liquors at that time; there was debility of body. He engaged in business to my knowledge after he left his family* (in 1870). He never said anything to me at any time about the woman he was living with. *I suppose I have taken one hundred acknowledgments of deeds for him before he left his family, and some afterwards.* I frequently wrote deeds for him. In my opinion I generally did all his conveyancing before he left his family, whenever he had a deed to prepare himself (R., 209, 211).

In 1878, *after the execution of the last three deeds,* Mr. Nailor and the defendant were living together on 14th St., Southwest. The two children mentioned in the trust deeds were also living with them. (R., 204.) *The two other illegitimate children had died some years previously.* (R., 24.) The children, Willie Ernest and Mary Edna had scarlet

fever in 1878, and Dr. Howard H. Barker, a physician, visited the house professionally to attend to them. (R., 204.) He also attended Miss Conley when she was sick. (R., 204.) He attended her professionally after the death of Mr. Nailor. (R., 209.)

Dr. Barker testifies substantially as follows:

I reside at 1116 H street, I have been a practicing physician in this city since March, 1870. I saw Mr. Nailor at his residence on 14th St., probably a dozen times. I visited his house professionally attending his children and Miss Conley; the children who lived there and died of scarlet fever—supposed to be his children. I conversed with Mr. Nailor occasionally; generally spoke of the condition of the weather, the improvements of the city, the excessive taxation, and upon one occasion he give me some reminiscences of his early experience in business. He sometimes spoke of these children when they were sick; he spoke particularly of the little boy (Willie Ernest), *of his great attachment to the little fellow*, and of the little fellow's attachment to him. He expressed a great deal of anxiety as to his condition, and urged me to do all I could for him, stating that he did not mind the expense. His conversation in reference to them was generally of that nature. *He said he loved that little boy better than any of his children. He was not to my knowledge at any time when I saw him under the influence of intoxicating liquor. I thought his mind was about as sound as you will find in a man of his age. I do not think there was any appearance of insanity or imbecility in his manner, conversation, or action.* (R., 203–205). My acquaintance with Mr. Nailor extended about four months. His two children (Willie Ernest and Mary Edna) died in August, 1878 (R., 24), and I had known him about four months previous to that. Then I did not see him any more to converse with him until the December following, when I only saw him a few minutes, which was the occasion to which I referred when I said it was only a few days before his death. Both the children died of scarlet fever. The girl lived only a few days after the boy. I believe I met Mr. Nailor at the house at nearly every visit during their last sickness. My conversations with Mr. Nailor were generally short, *except one*, just previous to

the death of the little boy. I remained at the house nearly all night, *and he was talking to me nearly all the time I was there.* The boy was severely ill during the whole of his sickness; that was only a few days previous to his death. Upon that night Mr. Nailor conversed upon the condition of those children; then he talked about some of his recollections of Washington in his early days; some of his business experiences; that was about all of that nature. I don't know of my own knowledge what the condition of his strength was at the times I saw him, for I was never consulted, professionally, about it. He appeared to lie about in the condition you would expect in a man of his age. He was able to go around, up and down the steps about as readily as a man of his age could be expected to travel. I should suppose he was about 65 years old. I saw Mr. Nailor a few days before his death. *He had been out walking*, and came in while I was there, and complained of feeling unwell. This was during the Christmas holidays the last time I saw him. (R, 203–207.) (Mr. Nailor died January 6th, 1879.) (R., 1.)

Mr. Thomas McCabe was a messenger in the office of the depot quartermaster. (R., 211.) At one time he was a reporter for the New Jersey press (R., 221), and, like many newspaper men, he considered himself capable to draw *legal papers.* (R., 221, 222.) He knew Mr. Nailor for about four years before his death. (R., 211.) He lived next door to him but one on Fourteenth street southwest (R., 217,) for about two years. (R., 115.) During that time he would see Mr. Nailor almost every day, except when Mr. Nailor was sick. (R., 115.) When he lived next door but one he would go in Mr. Nailor's house about two or three times a week. (R., 215.) He first saw Mr. Nailor by going in his house to borrow a spade from him. (R., 215.) McCabe used to be working in the garden, which ran parallel to Mr. Nailor's, and they used to talk across the garden. (R., 115.) McCabe testifies substantially as follows: (R., 211, 214.)

I had business transactions with Mr. Nailor. *I made out a will for him and some two or three deeds.* I used to sit with him sometimes in his house, and on one of these occasions he commenced to speak of his children, as they were around him, and he told me that he was going to provide for them by leaving them farms in Montgomery County. He told me that on several occasions, and in a subsequent conversation he told me he would leave them the houses on D street, and one on Twelfth street; the one on Twelfth street, I think he left to Kate Conley. He told me he was going to make a will and leave this to them in the will. I asked him to let me make out the will to give me the writing of it, and he did so. I made them out for him, and brought them to him, and he laid them by for the time, saying he hadn't time to look over them at that time, but he would look over them at the first opportunity, and told me to call again in a few days. I did so, and he expressed himself to me in this wise: That he often transferred property on forms no better made than they were, but he expected they would be disputed after his death, and it would be as well to have some one else's opinion on them, and asked me to go up to F street for Nicholas Callan, and bring him down. I went and brought Mr. Callan down. Mr. Nailor showed him the papers, and asked him his opinion as to their validity; whether they were legally made out, so that the property could be transferred by them. Mr. Callan made answer that there was no necessity for him doing that, as that he himself was fully competent to know whether they were legally made out or not. That ended the affair as to the papers; it turned into a desultory conversation, and Mr. Callan and myself left. I understood that Mr. Nailor sent them up to Mr. Carrington, (an attorney at law,) and that Mr. Carrington considered it was better to make out new papers, as they didn't cover the matter as well as could be done by a lawyer. I had about six or seven conversations with Mr. Nailor about the transfer of the property, covering three or four months. Nobody was present during these conversations, unless the children, unless on one occasion Kate Conley was present. On other occasions if she was present she went up-stairs. His manner towards the children seemed always to be very affectionate, he having them on the sofa and fondling them. He seemed to take great pleasure in having them near him. (R., 211-212.)

Mr. Nailor would be all the time saying that he hadn't any long to live—that he would have to do something for these children—leave them something *so they wouldn't be left on the world penniless.* Then he stated to me what property he would leave them, which as well as I can recollect were the houses on D street, and the farms in Montgomery County. I had conversation with him in reference to the will of which I spoke so far as to ask him for a description of the property, which he gave me to the best of his knowledge and told me that his papers were away from him, and asked me to go down to the record office and to examine the books. I did so and gave a brief examination to the best of my knowledge, and upon the information and data obtained there, along with what he told me, I made the will and the deeds out. *The will was executed before he instructed me to prepare the deeds. He spoke to me about the will, and said he thought it would be more binding to have the deeds as well as the will. As far as he could judge after his death, the disposition of the property would be contested in law, and that it would be more binding to have the deeds as well as the will and harder to break.* That was the purport of his discourse. (R., 213, 214.)

During the times he conversed with me on these matters, *he was not intoxicated.* He never spoke upon the subject when he was under the slight influence of liquor. He seemed to be a little cross when under the influence of liquor, and when he had taken a glass or two he would never talk on that subject. When I say under the influence of liquor, I don't mean to say intoxicated, either. *His mental condition seemed to me to be always good—sound.* Never saw any evidence of insanity or imbecility. His physical condition didn't seem to be very good; he was sick occasionally. My visits to his house were sometimes half an hour, sometimes an hour. As far as I knew him, for the short time I knew him, I think he was very shrewd, with more than average business qualifications. (R., 214.)

Cross-examined.

Mr. Nailor first mentioned the subject of making a will, or deed. *I prepared the will and gave it to Mr. Nailor.* I also prepared the deeds for him—farms in Maryland and some houses here in the town. I prepared the deeds for the

property in this suit, but *I do not think Mr. Nailor executed the deeds prepared by me. I know he decided against them.* They did not fill up all his legal conditions in reference to a good legal transfer of the property. I think there were three or four deeds. *I think Mr. Nailor sent the deed to Mr. Carrington.* I think I heard him speak of sending them. I heard him speak to Kate Conley of sending them to Carrington *soon after Mr. Callan was there*, but it was not on the same day. *I wrote the will before I wrote the deeds. I think I wrote the will a few months before I wrote the deeds.* I do not know whether Mr. Nailor executed the will. I got some papers recorded for him. Whether it was the deeds or the will I can't recollect. I got it recorded in the office of the *Recorder of Deeds.* I think I took one paper to the Recorder. I might have spoken to Kate Conley about writing the will for Mr. Nailor, when she was present an one occasion. This was *after* Mr. Nailor asked me to write the will. Mr. Nailor paid me $40 for writing the will and the deeds. *I never wrote any other will except that one*, but Mr. Nailor dictated some of that will himself to me. *He brought a copy down*, and as far as I can judge I went by that. I don't think I followed it in all particulars. I used a little of my own judgment. *The persons to whom the property was given were the same in the will which I prepared as in the copy he gave me.* I think the copy covered only the property over to the two children. I think the one I prepared might have covered Kate Conley; *I can't recollect.* The three deeds that I prepared were made to the two children and Kate Conley, as far as I can recollect. I gave the copy of the will, that Mr. Nailor gave me, back to him after I had used it. *I think there was some little difference in the wording* between the will prepared by me and the copy. *The only difference* I recollect is, that the copy had on it "Allison Nailor" alone, and I remarked to Mr. Nailor that "Allison Nailor, Sr." should have been on it. I think Mr. Nailor told me that Mr. Carrington thought the *deeds* I had written *had better not be used*, but others could be prepared by a *lawyer* to cover the matter. Kate Conley might have told me. I do not know who took the deeds from Mr. Nailor to Mr. Carrington's office. The first I learned they were sent to Mr. Carrington was from Mr. Nailor himself. I think Kate Conley told me also. She may also have told

me at some time that she took them to Mr. Carrington's office, *but I cannot remember. I have no positive memory that she told me. I can't swear that I ever heard that she took the deeds to Mr. Carrington's office.*

Mr. Nailor did not seem to be weak and sickly nearly all the time. I have seen him driving out himself in his buggy many a time. *I have seen him chopping wood for the fires* (R., 218–230.) Served in the Union Army during the war and was honorably discharged (R., 230.)

(By Mr. CARRINGTON, *Counsel for Defendant.*)

Question. You spoke of copying or using a certain will that was shown you by Mr. Nailor in the preparation of the will you prepared for him. Look at this paper and say if it is the one you refer to? (Paper handed witness and is here filed, marked Exhibit C. C., No. 1.)

Answer. It isn't (R., 230).

Cross-Examined by Mr. COLE (R., 231.)

Question. Do you know in whose handwriting this paper is? (Exhibit C. C., No. 1.)

Answer. I decline to answer that question.

Question. Can you recognize the handwriting of this paper?

Answer. I recognize Allison Nailor's name there.

Question. Is that all you can recognize?

Answer. I decline to answer that question.

Question. Did you ever see this paper before; if so, when and where?

Answer. I think I brought that paper to be recorded. (R., 231.)

(The witness is recalled for the completion of his cross-examination, R., 389.)

Question. Look at the paper now shown you, marked Exhibit C. C., No. 1, filed with the testimony given by you in the case, and say if you know in whose handwriting the paper is?

Answer. It is in that of Francis Schreiner, an attorney-at-law, I think. *I wrote it out from what Mr. Nailor laid down,* and thinking it might not be all right, got Mr. Schreiner to rewrite it.

Question. Then this is the will you prepared, or had prepared for Mr. Nailor?

property in this suit, but *I do not think Mr. Nailor executed the deeds prepared by me. I know he decided against them.* They did not fill up all his legal conditions in reference to a good legal transfer of the property. I think there were three or four deeds. *I think Mr. Nailor sent the deed to Mr. Carrington.* I think I heard him speak of sending them. I heard him speak to Kate Conley of sending them to Carrington *soon after Mr. Callan was there*, but it was not on the same day. *I wrote the will before I wrote the deeds. I think I wrote the will a few months before I wrote the deeds.* I do not know whether Mr. Nailor executed the will. I got some papers recorded for him. Whether it was the deeds or the will I can't recollect. I got it recorded in the office of the *Recorder of Deeds.* I think I took one paper to the Recorder. I might have spoken to Kate Conley about writing the will for Mr. Nailor, when she was present an one occasion. This was *after* Mr. Nailor asked me to write the will. Mr. Nailor paid me $40 for writing the will and the deeds. *I never wrote any other will except that one*, but Mr. Nailor dictated some of that will himself to me. *He brought a copy down*, and as far as I can judge I went by that. I don't think I followed it in all particulars. I used a little of my own judgment. *The persons to whom the property was given were the same in the will which I prepared as in the copy he gave me.* I think the copy covered only the property over to the two children. I think the one I prepared might have covered Kate Conley; *I can't recollect.* The three deeds that I prepared were made to the two children and Kate Conley, as far as I can recollect. I gave the copy of the will, that Mr. Nailor gave me, back to him after I had used it. *I think there was some little difference in the wording* between the will prepared by me and the copy. *The only difference* I recollect is, that the copy had on it "Allison Nailor" alone, and I remarked to Mr. Nailor that "Allison Nailor, Sr." should have been on it. I think Mr. Nailor told me that Mr. Carrington thought the *deeds* I had written *had better not be used*, but others could be prepared by a *lawyer* to cover the matter. Kate Conley might have told me. I do not know who took the deeds from Mr. Nailor to Mr. Carrington's office. The first I learned they were sent to Mr. Carrington was from Mr. Nailor himself. I think Kate Conley told me also. She may also have told

me at some time that she took them to Mr. Carrington's office, *but I cannot remember. I have no positive memory that she told me. I can't swear that I ever heard that she took the deeds to Mr. Carrington's office.*

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Answer. I think I brought that paper to be recorded. (R., 231.)

(The witness is recalled for the completion of his cross-examination, R., 389.)

Question. Look at the paper now shown you, marked Exhibit C. C., No. 1, filed with the testimony given by you in the case, and say if you know in whose handwriting the paper is?

Answer. It is in that of Francis Schreiner, an attorney-at-law, I think. *I wrote it out from what Mr. Nailor laid down,* and thinking it might not be all right, got Mr. Schreiner to rewrite it.

Question. Then this is the will you prepared, or had prepared for Mr. Nailor?

Answer. Yes, sir; it is the one I delivered to Mr. Nailor as the will prepared by me for him.

Question. When did you deliver it to Mr. Nailor?

Answer. I couldn't tell you now, I can't recollect; it was soon after ti was written. (R., 389.)

An effort was made to break the force of Mr. McCabe's testimony, but it signally failed. Mr. McCabe testified:

"Mr. Nailor asked me to go up to F street for Nicholas Callan and bring him down, I went and brought Mr. Callan down. Mr. Nailor showed him the papers, and asked him his opinion as to their validity; whether they were legally made so that the property could be transferred by them. Mr. Callan made answer that there was no necessity for him doing that, as that he himself was fully competent to know whether they were legally made out or not. That ended the affair as to the papers. It turned into a desultory conversation and Mr. Callan and myself left." (R., 212.)

Mr. Callan was called by the complainants, in rebuttal, for the purpose of contradicting this statement of Mr. McCabe (R. 391–393), and he testified substantially as follows:

I was called upon by Mr. McCabe at my office; he informed me that Mr. Nailor desired to see me for the purpose of his acknowledgment to a deed. I got the impression I was to take the acknowledgment of a deed from Mr. McCabe. I never went to Mr. Nailor's house with Mr. McCabe, or at his request but this once. There were no papers submitted to me on that occasion either by Mr. McCabe or Mr. Nailor. My opinion was not asked by either of the gentlemen in relation to any paper whatever. I gave no opinion. When we arrived at Mr. Nailor's dwelling I found Mr. Nailor reclining on a sofa covered with a sheet, or covering of some kind. Mr. McCabe remarked that he had brought Mr. Callan, a notary public, to take his (Nailor's) acknowledgment to a deed. Mr. Nailor promptly replied that he would not execute it, and refused to do so on the ground that he did not understand it. The deed was not submitted to me, and I never saw it; never gave any

opinion. Mr. McCabe was evidently very much disappointed at the refusal of Mr. Nailor to sign the deed. Mr. McCabe simply said to Mr. Nailor that he was there with Mr. Callan to get his acknowledgment, without stating what the deed was—its purposes. I went with Mr. McCabe to Mr. Nailor's house *on the 23d day of January, 1878.* (R., 391–393.)

It thus appears that Mr. Callan wen t to Mr. Nailor's house, *after the execution of the will*, and about two months *before* the three deeds, in controversy in this suit, dated March 29, 1878, were executed. How consistent all this is with Mr. McCabe's testimony. It is easy to reconcile the seeming discrepancy between the statements of Mr. Callan and Mr. McCabe as to what was said and done at Mr. Nailor's house. Mr. Callan simply forgot the *affirmative* matter testified to by Mr. McCabe. He was there simply to take an acknowledgment, and there was nothing to impress the details on his memory.

"Exhibit C, C, No. 1," is to be found on pages 231 and 232 of the printed record. *It is the will prepared by Mr. McCabe at the request of Mr. Nailor. It was executed by Mr. Nailor, and bears date December 31, 1877*, about three months before he executed the three deeds filed as exhibits in this cause. (R 9–15.)

In the first clause of the will he devises to his son Willie Ernest the farm in Montgomery County, known as "Friendship," containing about 100 acres. This same property is conveyed for the benefit of Willie Ernest in the trust deed marked Exhibit C. (R., 11–13.)

In the second clause he devises to his daughter Mary Edna certain property in the city of Washington. The same property is conveyed for the benefit of Mary Edna in the trust deed marked Exhibit B. (R., 9–12.)

In the second clause he also devises to Willie Ernest 30 acres of woodland in Montgomery County. The same prop-

erty is conveyed for the benefit of Willie Ernest in Exhibit C. (R., 11–13.)

In the same clause he also devises to the defendant a farm in Montgomery County. The same property is conveyed to her in the deed marked Exhibit D. (R., 14–15.)

This will was signed by Mr. Nailor, and attested in the presence of three witnesses, namely, James Alman, Malcolm Douglass, and C. M. Hammett. (R., 232.) Malcolm Douglass, having been shown the will, testifies as follows:

"The first signature is that of Mr. Alman, the second is my signature, and the last is that of Dr. Hammett. *Mr. Nailor signed his name in the presence of the three witnesses.* I saw Mr. Nailor sign his name. It it his signature. I saw the other two witnesses sign. They signed in the presence of Mr. Nailor. He requested the witnesses to sign. The condition of Mr. Nailor's mind at that time was the same as usual. I saw nothing different from what I have always seen in him. He appeared in a good humor. *He was of sound mind at that time. He was sober.* (R., 385, 386.)

Cross-Examined. (R., 386-388.)

Mr. Nailor signed it while he lived on 14th street. *No one was present but Mr. Nailor and the witnesses. Mr. Nailor stated it was his will.* He said he wanted me to sign it. Mr. Alman and Dr. Hammett were there when I went there. Mr. Nailor sent for me. That is what his messenger said when he came after me. I lived about 200 yards from Mr. Nailor's. I was there 15 or 20 minutes. I had known Mr. Nailor a long time. He was in the second story front room when I went there. When I went into the room he was talking to the doctor and Mr. Alman. He stopped talking to them, and told me what he wanted. *He was standing at the front window*, to the best of my knowledge. Never had any conversation with Catharine Conley prior to Mr. Nailor's death. (R., 386-388.")

Another witness of the will was Dr. Charles M. Hammett. It will be remembered that he is the physician who

was introduced as a witness for the *complainants*, and who admitted, upon cross-examination, that he wrote the affidavit on page 402 of the record. (R., 398.) He testifies that he witnessed Mr. Nailor's signature to the will (Exhibit C. C., No. 1.), and that he affixed his (Hammett's) signature thereto as a witness; that two other witnesses were present, and that Mr. Nailor made some remark at the time about conveying some property. (R., 396-398.) He further says:

> That he attended Mr. Nailor professionally in January, 1878, "*and on prior occasions*," but he "*don't think*" that he witnessed the paper as early as the last part of December, 1877, but *thinks* it was the following month—January.

Well, he may have been mistaken *as to dates*, that is all. We don't think he was at all mistaken as to the facts stated in his affidavit (R., 402). It will be observed that the complainants' counsel *studiously avoided* asking this witness any questions as to Mr. Nailor's *soundness of mind* or *mental or bodily condition* at the time the will was executed.

The *deeds* prepared by McCabe *were not executed by Mr. Nailor*. They were sent by Mr. Nailor to Mr. Carrington's office, and new deeds were made out. It is admitted that the deeds in controversy in this cause, dated March 29th, 1878, were prepared in the office of Mr. Carrington (Stipulation, R., 24, 25).

The *motive* of Mr. Nailor in making the *deeds* as well as the will, is clearly shown in Mr. McCabe's testimony. Mr. Nailor said he thought it would be more *binding* to have the deeds as well as the will; that after his death the disposition of the property would be contested, and that it would be more binding to have the deeds as well as the will and harder to break (R., 214), and he has been borne out by the result. The property covered by the will and the deeds is the same—the beneficiaries are the same. The only difference is,

that the will devises *directly* to the children, the deeds convey to the defendant in trust for them, and give her a contingent interest in the event of their death. The land devised directly to the defendant *for her own use* is the same that is *conveyed* directly to her by Exhibit D.

The deed (Exhibit C, R., 11–13) conveys in trust for Willie Ernest Nailor, a farm in Montgomery County, Maryland, containing one hundred acres, and recites that the "farm is now occupied by Mr. F. Beans, as tenant" (R., 12.) This farm is situated about *eight miles from the city*—two miles above Tennallytown, Md.

This tenant, *William F. Beans*, was examined as a witness for the defendant, and testified in substance as follows:

I reside in Montgomery county. I have resided there about six years. I rented the farm where, I reside, in 1874 from Allison Nailor, senior, by a written lease (R. 318, 323). (Witness produced the lease.) It is for five years from the 1st of January, 1874 (R. 323). I paid the rent to Mr. Nailor. The last payment to him on account of rent was made *the Christmas eve before he died* (R. 318).

(This was thirteen days before he died.)

The witness continues: I have the receipt for that rent.

(Witness here produced receipt of December 24, 1878, which is filed by defendant's counsel. This receipt is on page 323 of the Record.)

The witness continues: *That receipt is in the handwriting of Mr. Nailor.* I saw him frequently prior to that time, sometimes at my place, sometimes at his house, once a week about. I saw him at my farm a short time before his death. I had some conversation with him then. I spoke to him why he did not come over when he was up before. I was interested in the building, had some hauling to do. He said: What had he to come out for now, Willie was gone, and he would give all his farms if he could get Willie back (R. 318).

(This remark must have been made by Mr. Nailor, of course, after the death of Willie, which took place in August, 1878, R. 24.)

The witness resumes: We talked about the new building. He seemed to take an interest in it. On one occasion he said he wanted to hurry it up; that he did not expect to be here long (R. 318). He contracted with me, or rather, I did with him to do the hauling for him, and boarding the hands (R. 319).

He selected the location for the house. (R., 319.) The new house in question was being built by Mr. Nailor on the farm I had under rent. (R., 327.) It was a frame house two stories high. (R., 327.) There is another house on the farm, the one I live in. (R., 327.) When Mr. Nailor died the new house was not completed (R., 327), the rafters were not put on. *It was commenced, I think, in May*, 1878. (R., 321.) Mr. Nailor was close and shrewd in money matters. (R., 319.) He seemed to understand what he was doing in business transactions. *The condition of his mind was good during the period I knew him.* (R., 319.) I am married and have five children. (R., 320.) I heard Mr. Nailor say on one occasion *that he had given the place to his little boy: which was about the time he was commencing the house* (R., 322), (the house was commenced in May, 1878.) On another occasion I spoke to him about re-renting and he said he had nothing to do with it, to talk to Miss Conley. She was seated in the buggy with him. I told him that was not satisfactory, and she said that is all right, Mr. Beans, you farm on. (R., 322.) During the last two or three years of Mr. Nailor's life he was out to the farm more frequently than he was previous to that. He would stay perhaps three hours. He might be there once for two or three weeks, sometimes twice a week, and then again for three or four weeks he wouldn't be there. Sometimes Miss Conley was with him and generally his little boy. (R., 325.) I did business with Mr. Nailor, besides that connected with the renting of the farm. We entered into an agrement for the hauling for the house that was being built, and the boarding of the hands. (R., 326.) *An old colored fellow called Bob Wineberry had the contract for building the new house.* (R., 327.) I have seen Mr. Nailor intoxicated. (R., 327.)

Question. Do you know Washington Nailor, one of the parties plaintiff to this suit?

Answer. I know him by sight.

Question. Did you ever have any conversation with him about this suit?

Answer. On one occasion.

Question. State that conversation.

Answer. As well as I remember, he asked me how things were getting along up on the farm. I told him very well, as far as I knew. He asked me when that damned bitch, or some such remark, I don't remember the exact words, had been up there. I told him I presumed I knew who he meant; that I had taken her down that morning. He reproved me for having paid her some money. I told him I felt myself in a very awkward situation, and I sent word to his mother, through my brother, that if they had the power to serve a notice on me, to do it. I also told him that I believed that at the time the old man died that if I had a landlord or landlady that Miss Conley was my landlady. He made some slight remark about that—landlord or landlady, hell! or something of that sort; that I could have paid them the rent if I chose; that she had nothing only what she had got in an improper manner, and that if they should lose it I would be safe, having the receipts. * * * He said there was a certain young married man who was going to get himself into trouble in regard to this thing, and as I heard some remarks that he had made about me previous to that, it touched me a little, and I told him he had made some improper declarations in regard to me. He wanted to know what they were. I told him I understood he said I had had improper intercourse with this woman, Mrs. Conley, and if so, he had better make his points very strong, I told him. He said that seeing was knowing. I told him yes, that what a man saw he had a right to believe. Anything further than that I don't remember at that time.

Question. What did he say, if anything, with reference to being a witness in this case?

Answer. He said he supposed I would be a witness in the case.

Question. Anything further?

Answer. I told him I didn't know whether I would or not. He said if I was a witness there could be questions

I could answer; there might be others I could say I decline to answer, and, if so, there was a way to make me answer. I told him I supposed I knew the importance of a witness. (R., 319, 320.)

An unsuccessful effort was made, on cross-examination, to show that this witness had been unduly intimate with the defendant. The testimony on the subject is to be found on pages 328–332 of the printed record. It would make this brief too long to analyze all the testimony. The witness testified that the statement was false, that he had taken *indecent liberties* with the defendant in 1879, after this suit was brought, in the presence of one Wm. A Leach. (R., 330–331.) Leach was called by the complainants as a witness in rebuttal. He says, "he had been in the liquor business." He contradicts Mr. Beans, as to the indecent liberties taken by Beans in his presence. (R., 398–400.) We don't believe Leach. We don't believe that Beans a married man with five children, would have exposed either himself or the defendant before this stranger. Leach says he had met a man named Beans, but *didn't know his first name.* (R., 399.)

Mr. Beans has testified that the new house, being built by Mr. Nailor on the farm leased to him by Mr. Nailor, was commenced in May, 1878, but was not completed at the time of Mr. Nailor's death, and that a colored man, called Wineberry, had the contract from Mr. Nailor for building this new house.

Robert Meredith testifies substantially as follows:

My liberty name is Robert Ulineberry, (very much like Wineberry.) I belonged to Benedict Ulineberry, and before I got my freedom I had to take his name. But my father's and mother's name was *Meredith.* I got my liberty under the name of Ulineberry eight years before the war. (R., 277.)

I am 54 years old (R., 277); I reside on 14th and C Sts. in this city, I have lived there four years; *I am a house carpenter.* I knew Allison Nailor, senior, four years this last September. I built for him and repaired for him. I put up a couple of houses in the country for him; one is completed *and the other is not.* (R., 272.) *I commenced work for Mr. Nailor on his farm the 28th of July, 1877.* (R., 274.) The first house I built was *a corn-crib and granary.* It was commenced in July, 1877 and finished October 20th following. (R., 277, 278) Mr. Nailor boarded me and paid me $50 for the corn-crib. *I boarded at Mr. Beans'* (R., 278). Mr. Nailor paid my board. (R., 278.) The other house in the country was a *dwelling house.* It is not finished—only the frame sawed together and ris; there are no rafters or weather boarding. (R., 274.) *I commenced to build the dwelling house on the 8th of May, 1878.* (R., 278.)

Mr. Nailor mentioned to me how he wished the two houses in the country to be done. The first building (the corn-crib, R., 278) he simply drew with his cane on the ground. After we agreed upon the price I went to the farm and he came there and showed me where he wanted the building. (R., 272.)

The next year (1878) he asked me if I ever built an eight room house. I told him I had, a many one. He wanted an eight room house and told me to draw a plan. I did so, and he understood it, and said it was perfectly right. Then he wanted to know what I would build it for, he to furnish everything except the frame; that I was to get. I told him what I would do and we agreed on the price. He told me to go ahead and do the work according to your plans, and complete it up, and your money will be all right. Before I got through that, then he came to me to repair this house on 12th street. I came down and he told me to look at it and see what I would do the work for. He told me how he wanted it done, and everything; that he wanted another story raised on it. He said, 'do the work, complete the work, and you will have no trouble about your money.' I got through there, and he wanted to know if I was going back to the country to finish the building I was at work on and left on the 13th of July. (The dwelling house commenced May 8th, 1878.) I went back up there on the 29th of October, and worked from then until Christmas; then I

came down and that was the last work I done for him. (R. 272, 273.)

I never had any trouble in settling my accounts with him but once, and that was pretty much my own fault, I guess. Never had any trouble except about tearing down an old building on G street (R. 273). I often talked to him about the buildings and the work I was doing, and he used to often talk with me (R. 273).

When I was tearing down this building on G street he said he was going to send the lumber up in the country to put up the corn-crib and granary, all under one roof. He said he was doing this to provide for Willie, that the house I was putting up there was for Willie. He would often ask me how I was getting along with the buildings, and when I would want shingles or nails or anything like that. After I got it completed he told me to come and get my money. He came to the country twice the first week I was building the corn-crib. He came to the country pretty often. Miss Conley came with him and the children and the cook. They brought the cook along to take charge of the children (R. 280). These all came up to the time of the death of the children (R. 273).

(The children died in August, 1878.)

If I was working any where close by him I would see Mr. Nailor in the city pretty much every day. I used to go up to the stable for the horse and buggy for him pretty often. (R., 274.) I have had many conversations with him. He used to talk a great deal about his children. I mean by Mr. Nailor's children Kate Conley's children. When the children were living he would often tell me what providence he wanted to make for them. After the death of the children he, of course, used to talk about them. He would talk about little Willie, if he had lived what he intended on doing in that way. He said that house he was living in (on Fourteenth street southwest,) was for Willie. (R., 275.) I used to sit down there in his dining-room and talk with him. (R., 275.) *The condition of his mind during the period I knew him was very good.* All the dealings I ever had to do with him he was smart enough. I couldn't say how often I have seen him to be really drunk. I have seen him tight, but to say how often I wouldn't pretend to say. (R., 274, 275.)

Question. Do you know Mr. Washington Nailor (one of the complainants)?

Answer. Yes, sir.

Question. Have you had any conversation with him in reference to this case?

Answer. I was talking with him twice—threetimes, I believe.

Question. When and where did the first conversation occur?

Answer. On Fourteenth and the Avenue.

Question. What did he say?

Answer. He was asking me if I wasn't with the old man at his death. I think that was the first. He was asking my opinion about what did I think of the old man, and about this Miss Catharine Conley; did I think she kept him under the influence of liquor. I told him rightly that I didn't know; that I stayed there. The next time I saw him he was asking me the same. This was on Fourteenth and C streets. He asked me did I think he was capable of transacting business. I told him I had done right smart of work for him; according to my judgment he was. There were several things he asked me, and I couldn't bring them to recollection. He asked me if I thought he (Mr. Nailor, Sr.,) was the father of the children. I told him I didn't know, *but they certainly must be, for they were just like him.* The third conversation was on Fourteenth and C streets. It was pretty much the same.

Question. Didn't he say something to you about your testifying in his behalf; about his winning this case?

Answer. If he won this case, of course I should have the finishing of the house up there. He said he had looked at it; this was the second time he was down there.

Question. Did he come to your house?

Answer. No, sir; he saw me and called me out of my shop to his buggy. (R. 275, 276.)

We will here introduce the testimony of the complainants in rebuttal, designed to impeach the statement of this witness in reference to his conversations with Washington T. Nailor, on 14th street.

W. T. Nailor was recalled in rebuttal and testified that he knew Robert Meredith, and that he never said to Mere-

dith that if he won this case he, Meredith, should have the finishing of the house on the farm, or anything equivalent to it. (R. 400.)

Matthew Tremble, *another of the complainants*, was recalled in rebuttal and testified that he had met Robert Meredith in company with Mr. Wash. Nailor—only once, he believes, on 14th street,—that on that occasion he heard all the conversation that passed between Mr. Wash. Nailor and Meredith, and that Mr. Nailor did not tell Meredith that if he won this case he, Meredith, should have the finishing of the house down on the farm, and that Mr. Nailor did not urge Meredith to testify for the complainants or offer him any inducements to do so. (R. 401–402.)

The testimony of Robert Meredith is resumed as follows:

Mr. Nailor was to give me $100 for building the dwelling house on his farm. I first asked him $200. He said no, he would give me $100 and board me. I had to get the frame for the dwelling house out of the woods belonging to him, the same as I did for the corn-crib, and he was to furnish all the material. I was to get the frames out of his woods—on his 30-acre lot. *He drove through the woods and showed me where to get it.* (R., 279.)

I never saw Mr. Nailor drink in the country. Sometimes he brought a flask with him and offered me some (R., 280). I have seen him drink at his house in the city—not often. (R., 280.) I have seen Kate Conley fix the punch for him to drink at different times. (R., 280.)

Question. Do you remember of seeing him (Mr. Nailor, senior). executing a paper, a will, at any time?

Answer. I was there with one.

Question. When was that?

Answer. That was in March, 1878.

Question. Who else was present?

Answer. Mr. Mark Douglas, James Allman, Dr. Hammett.

(These are the attesting witnesses to the will. R., 232.)

Question. Was it a will?

Answer. 'Deed I don't know.

Question. What did they say it was?

Answer. They told me it was a deed.

Question. Who said it was a deed?

Answer. He told me it was a deed, I think.

Question. A deed to whom?

Answer. Of property to Willie; so much, he said, was for Willie, and as for Edna, I don't remember.

Question. Do you remember the day in March that this was?

Answer. I don't.

Question. Was Kate Conley there?

Answer. She was.

Question. Who went for Douglas and Allman?

Answer. I went for them.

Question. Who sent you for them?

Answer. He sent me.

Question. Was the old man well at that time?

Answer. No, sir; he wasn't well; *he had been out, though.*

Question. Was he in bed?

Answer. No, sir, setting up.

Question. Did you not tell Wash. Nailor and Matthew Trimble that the old gentleman was sick in bed, and had to be raised up to sign the will, and that Kate Conley sent you for Douglas and Allman; and did you not tell them this on one of the occasions you saw them at your shop, and talked to them about this case?

Answer. I might have done—but I wasn't sworn; I was a colored man and didn't want to be hampered by people examining me on the street, but I am here now to tell the truth as near as I can.

Question. Did you not tell them on the same occasion at you did not consider the old gentleman competent to transact business during the time you knew him, and that you would not have bought property from him under any consideration?

Answer. I told them this: I wouldn't like to do it, and there is where they wanted to hamper me. He asked me if I had ever transacted any business for his father, and I told him about tearing this old shop down. I told them that the old man was incompetent to transact business, and that I wouldn't have bought property from him.

Question. What reason had you, if any, for telling these gentlemen at that time what you did?

Answer. . *I didn't want the hard feelings of no person; I didn't want to be called as a witness by either side.*

Question. At the time you told these gentlemen that you thought Mr. Nailor was not competent, did you believe that was true?

Answer. No, sir; I didn't believe it to be true, not in every instance.

Question. When you told them that the old gentleman was sick in bed when he signed the will, was that true or false?

Answer. That wasn't true.

Question. What was the truth? Was it what you have stated in your examination under oath?

Answer. What I have stated is the truth, and that is, that the old man had been sick, but had gotten well enough to go out. (R., 282, 283.)

We hold that no one can read the testimony of this elderly colored man without being *deeply impressed by its truth.* He was frequently at Mr. Nailor's house, and sometimes went on errands for him. It will be observed he does not say that either he or Kate Conley was *in the room* when Mr. Nailor executed the will, nor does he say he saw Mr. Nailor sign it. He simply means that he and Kate Conley were at the house at the time of its execution. He is mistaken, of course, when he says the will was executed in *March, 1878.* His testimony was taken in 1880, and he might readily forget as to the month in which the will was executed. The will is dated Dec. 31, 1877.

Kate Conley came to this country from Ireland in 1864. Her brother sent over for her, and upon her first arrival in Washington she stayed with the Kyne family on K street between 21st and 22d streets. She was then about 16 or 17 years old. (R., 233). (That would make her 21 or 22 when she became acquainted with Mr. Nailor.) Her brother then boarded at the Kyne's, and he directed her there. (R., 236.)

Mrs. Bridget Kyne testifies in substance as follows:

I reside on 14th street between B and C streets, southwest. I have known Kate Conley since she came to this country 16 years ago, *i. e.*, in 1864. When I first knew her she lived at our house, my father's house, (R., 236) on K street in this city. She lived with us two months and then she went out in service. At the time she lived with me I thought she was about 16 or 17 years old. At the time she lived with me she behaved like a nice, proper, decent girl. I discovered her relations with Mr. Nailor through a friend of mine who had come out where I was living, and I was asking for her. The next time I came to Washington I went to see her. I was then living in Howard County, Md. I continued to live in Howard County after that about two years. I moved back to Washington in March, 1874. I was in the habit of visiting Kate Conley after my return to the city in 1874. She was living with Mr. Nailor on 14th street. I have talked with Mr. Nailor at the house very frequently. He would talk about different things. He talked to me about Katie and the children, and what he would like to do for them. He would say he would like to leave them something to support them hereafter. When he was talking about it he would be both in his own house and mine, and in several other places when we would meet. He first commenced talking about this matter five or six years ago, (*i. e.* in 1874 or 1875.) The last time he talked with me about the matter was about three years ago, (*i. e.* in 1877), as near as I can think. I heard him speak about a will, but I almost forget what about it, but he did tell me what he did will the children. I have often seen him in the presence of the children. His manner towards them was very kind, very loving. I saw him shortly before the death of Willie and Edna. I have seen him in the presence of Kate Conley. Her treatment of him was very kind. When he was sick she acted very kind, very gentle. I used to see Mr. Nailor take a little liquor. I dont remember seeing him under the influence of liquor in the house, but I have seen him coming in under the influence of liquor, and she would get very angry with him. *Mr. Nailor's mind was right during the time I knew him.* I did'nt see any insanity about the man. *I often came to him for advice, and I am sure he gave me good advice about my little business.* (R. 232, 235.)

I was married in 1865 or 1866. My husband has been dead since July 1873. (R. 236.)

This witness was subjected to a cross-examination, occupying thirteen pages of the printed record. (R., 235–248.) It does not shake her testimony, but we have not space to analyze it. For the benefit of the complainants we will, however, give the concluding questions and answers:

Question. Don't you think Kate Conley ought to succeed in this suit?

Answer. I am no lawyer to think anything, of course. I don't know anything about law.

Question. Don't you hope she will succeed?

Answer. Yes, sir; I do. I would be very much rejoiced. (R., 248.)

Mrs. Mary E. Rallinger, fifty-six years of age, lived in the house with Mr. Nailor and defendant. She went there at Mr. Nailor's request, to nurse little Willie when he had scarlet fever, in 1878. She remained there until both children (Willie and Edna) were dead. They died in August, 1878. Shetestifies substantially as follows:

I knew Allison Nailor for three years before his death. I became acquainted with him by living the second door from him, and by his little children. He had a little boy about the same age as my little girl, and they became very intimate. I visited his house after I became acquainted with him. The way I came to visit his house was that I used to go in the morning and get milk from Miss Kate. She kept a cow. I lived in the house with them. The little boy was taken sick. I heard he had scarlet fever and I went to see him. Mr. Nailor asked me if I would assist her (Miss Kate) in taking care of him. No person would go in; the people were afraid of giving it to their children. I stayed until both children were dead and buried. From that time up to the day of Mr. Nailor's death there was scarcely a day that I didn't have a conversation with him. We talked a good deal about the children. He would say that if they had lived they would have been a great comfort to him. At the time of their sickness he appeared to be in a great deal of trouble for

fear he would lose them. He would coax them, kiss them, and beg them to take their medicine. He acted as though he would give everything he was worth to have them spared. He cried as hearty as ever you saw a man after their death. The night Willie died he didn't sleep any scarcely, but stood around the bed. Mr. Nailor and Kate Conley treated each other pretty much as man and wife. She was very kind to him when he was sick. I think I saw him intoxicated once while I lived with him. *I never wsa any signs of insanity, or anything like that about him. He had an excellent memory.* I never thought any person could influence Mr. Nailor, so far as I knew him. He was a very positive man, in my judgment. I never saw anything amiss in Kate Conley during the time I knew her. Of course what she done we all know, but outside of that I never saw anything amiss by the woman. I was with him during his last illness. I did not hear him say anything about the members of his family, unless he was asked when she asked him if he wished to see any of them, and he would say no. He was baptized by a Catholic priest the day before he died. (R., 248-252.)

[This witness was subjected to a long cross-examination (R., 252–263), but it did not impair her testimony.]

Mrs. ANN MCCUE lived on 14th street, just across from Mr. Nailor, and was acquainted wit him and the defendant for six years before his death. She was a Catholic, from Ireland, and Kate had been christened in the same Church. (R., 270.) She was very intimate with Kate. She visited there when the children (Willie and Edna) were sick as high as eight or nine times a day. They used to send for her. Animated with all the zeal of her Church, Mrs. McCue *endeavored to get Mr. Nailor to go home to his family, and to get Kate to leave him.* (R., 269.) She wanted Kate to go back to her church. "But for that," she says, "I wouldn't have bothered with her." (267, 268.)

This witness testifies substantially as follows:

Kate treated Mr. Nailor very well. She was very kind to him. I never saw Mr. Nailor under the influence of

liquor but once during the time I visited there. He was very fond of the children. He was very distressed after their death. *I think he was a very intelligent man and a very smart man.* He couldn't be controlled by anybody. I heard Mr. Naylor express an intention of providing for Kate or her children six or eight times, to the best of my knowledge. (R., 264, 265.)

I asked him if he didn't know he was laying in a bed of hell in staying with her. He told me he didn't want me or any other damned she priest to ask Kate to leave him; he wanted her to stay with him while he lived, and he meant to provide for her and the children. I had tried to get her to leave him. He said that twice to me. I asked him twice, but didn't say anything more to him about it. He was a man that didn't like anything said to him about it. (R., 265.)

Cross-examined. (Rec., 265–271.)

I happened to be first at Kate's house six years ago. A little girl was nursing for her, and I made some dresses for the girl and carried them over to her. After that I visited them frequently, and continued to visit them up to the time they moved over to 12th street. They moved to 12th street in the fall (1878), and he died in January, I think (1879.) I saw Mr. Nailor every day, sometimes twice and sometimes five or six times a day from the time I first got acquainted with him until he moved to 12th street. Sometimes I would be over there, and sometimes I would see him going by in his buggy. I used to go to the gate for milk every morning, and sometimes I would go inside. Mr. Nailor talked of how his family used to treat him. *He said he had made his will* and he did'nt give a damn who knowed it. *I do not remember when this was;* it was a good while before the children were took sick. It was a year before the children died. I saw the doctor's carriage and I went over and asked who was sick, and he said no one; and I said, why, I saw the doctor here, and he said I have made my will, and I have willed a couple of houses to poor Edna and a farm to Willie. Oh! it was more than a year, must be nearer two years; three years; *I don't know exactly the time; I never kept no accounts,* it never troubled me; when I found I couldn't separate them

it didn't bother me. He said he would leave Kate independent for taking care of him; that she took care of him. He said this when talking about providing for the children. Kate is a Catholic, so am I. If she was not a Catholic I wouldn't have bothered with her, as I wanted her to come back to her church. I am friendly to Kate as a neighbor, nothing else. Undoubtedly, I knew Kate was living with Mr. Nailor without being married to him. I don't think it was proper conduct for Kate to live with Mr. Nailor without being married, *but he said he took her when she was innocent*, and intended to provide for her. I told him to go home to his family; he said God damn them, he didn't intend to go home to them, *that they hadn't treated him right.* I tried to get Kate to leave Mr. Nailor. I wanted her to go back to her church, which she had left. He was not feeble; he could go when he pleased, and did it, too. He could go out in the yard and chop wood to my seeing. The first church Kate went to I brought her to St. Dominic's. She was Christened in the Catholic church, and brought up in it. When she lived with Mr. Nailor she didn't go until I brought her. I am married. My husband and myself have been living together twenty-four years. My husband is working in the Commissary. (R., 265–271.)

(This witness testifies that Mr. Nailor said he didn't intend to go home to his family; that they hadn't treated him right. It is to be remembered that when he said this he had been divorced *a mensa et thoro* from his wife. (Bill, R., 4.)

We do not propose to give an abstract of the remaining testimony for the defendant, as we wish to be as brief as the circumstances of this case will allow. *There are twenty-two additional witnesses for the defendant.* Their evidence is strong and convincing in her favor upon all the material issues, and especially upon the question of Mr. Nailor's competency to make the conveyances. They corroborate and confirm the evidence, a summary of which has been

given. We can only call attention to this additional testitimony, and pray that it may be considered by the Court. The list of these witnesses is to be found in the index to the Record pages III. and 1V.

Evidence for the Complainants.

We come now to consider the evidence for the *complainants*.

We have already considered the testimony of the witnesses, who are complainants, also the evidence of Harriet Schofield, and her husband, also that of James S. Topham, Dr. Hammett and William A. Leach, and we will not refer to them again.

There were four witnesses who claim to have had sexual intercourse with the defendant at some periods *between the years 1871 and 1875. There is not a particle of evidence in the record showing, or tending to show, that the defendant was not a virtuous and well-behaved girl up to the time she was introduced to Mr. Nailor, in November, 1869.* The names of these four witnesses are Thomas Trundle (R., 159–164), Patrick McNamara (R., 165–174), Wm. E. Edd (R., 187–192), and Richard T. Brown (R., 193–197).

The first of these (Trundle) says he is a carpenter; has been married and has one child; resides in Maryland; is fifty-three years old, and had illicit intercourse only once with the defendant about 1875. The credibility of this man is impeached and he is flatly contradicted by Harriet Waters. (R. 377–379.)

The second (McNamara) says:

He is married; has five or six children; has been in the grocery business, *but is doing nothing now; has no property; that Mr. Nailor once accused him of stealing a watch from him;* and that he had sexual intercourse with the defendant in 1871 or 1872, and afterwards on 14th street, a good

while before Mr. Nailor died. This witness got "caught" upon his cross-examination. Mr. Carrington asked:

Question. How many times did you have sexual intercourse with her on 14th street?

Answer. Can't tell how many times; I took no memorandum of it.

Question. How many times *on 12th street*?

Answer. That I can't tell either.

Question. Was it frequently?

Answer. No, sir; not on 12th street.

Question. You mean as it was on 14th and on E street?

Answer. That's what I mean; yes, sir.

(Redirect by Mr. COLE.)

Question. On Cross-examination Mr. Carrington asks how many times you had intercourse with her on 12th street, to which you answer that; I can't tell. Please state whether you ever had intercourse with her on 12th street?

Answer. I don't think I ever had on 12th street. (R. 171, 174.)

If there ever was a case where the maxim *falsus in uno falsus in omnibus* ought to apply, it is here.

The third man (Edd) says he is a horse-clipper and *hack-driver*, but *is not doing anything now*, and now resides in "Purdy's Court," but has kept house in other places. (R., 189.)

By Mr. CARRINGTON:

Question. Are you not living in Purdy's Court in adultery?

(Objected to by compl't, because improper, *and being a question to which the witness is not obliged to answer.*)

Answer. I decline to answer that.

Question. Have you not been living in adultery at the various places you have mentioned for the last three years?

(Same objection,)

Answer. I decline to answer that. (R., 189, 190.)

This man says he had illicit intercourse with the defendant in 1874.

His testimony is empeached by John T. Price, (R. 375, 376,) who appears to be a witness who was also examined on behalf of the *complainants*. (R. 99.) Mr. Price testifies that Edd told him that Mr. Nailor wanted him to testify about having conversation with this woman, ~~but~~ *that it wasn't true*, and he wasn't going to do it. He did not say which Mr. Nailor; he only said Mr. Nailor. Subsequently witness heard that Edd had testified in thisc ase. (R. 375, 376.)

The fourth man, Brown, says he was a cook in the army in Dakota, but is now employed "off and on" in the market; that he receives no particular wages but his board at home; that *he is married*, and that he had intercourse with the defendant on 14th street, in 1874 and 1875. (R. 193, 197.)

We call attention to the cross-examination of this witness to show how unworthy he is of credit. (R. 194–197.)

The testimony of these four witnesses on the subject of sexual intercourse is *wholly inadmissible, irrelevant to the issue, and ought to be expunged from the record.*

It was objected to at the time it was offered, and we have a right to object and do object to it now, pursuant to the stipulation of counsel, (R. 24), on the ground of inadmissibility and incompetency.

It sheds no light on the question of undue influence, or of Mr. Nailor's capacity to make the deeds in question. One of these men, Trundle, was actually examined to show that Mr. Nailor was not mentally competent to dispose of his property. Well! we have nothing further to say about him.

The complainants' counsel offered in evidence the records of the court below, holding a criminal term, in three cases, and filed with the Examiner copies of the Minute-book in said cases as exhibits. (R., 200.) These exhibits are to be found on pages 202 and 203. Of course these records, and these copies of the minutes were objected to at the time by de-

fendant's counsel, and the reasons assigned. (R., 200.) Besides, we have a right to assign any reasons we please against their competency pursuant to stipulation. (R., 24.) These exhibits are so clearly *inadmissible* that we will not discuss the matter. All three of these cases were *informations* in the Police Court, appealed to the Criminal Court, and were brought *in 1870 and 1871, long after Mr. Nailor had commenced to cohabit with the defendant.* Mr. Nailor appears to have been the defendant's surety in two of them, and we have no doubt he was in the third. One information was for selling liquor without a license, another for keeping her place open on Sunday, and the other for keeping a disorderly house.

The complainants' counsel also offered in evidence the record in the suit against Mr. Nailor, brought by his wife, in 1873, for a divorce, *a mensa et thoro*, for adultery and abandonment. We do not think this record was admissible, but we are willing to concede that, in 1873, this suit was brought, and that a decree was rendered in the wife's favor.

At last, we reach the *vital point* of the complainant's case. This case seems to have been tried below on the alleged immoralities of Mr. Nailor and the defendant, and not on the facts and the law. We are willing to concede that Mr. Nailor was a reprobate. We have not one word to say in justification of his dissolute course, but he was the *same man* when he was acquiring his wealth by his industry, shrewdness, and business skill, as he was when he made the conveyances in controversy, with the exception that he was older when the conveyances were made, and his *physical* strength was not, perhaps, so good. He was the same man morally, and the same man *mentally*. The complainants admit that, as far back as previous to 1854, he drank, went on sprees, and frequented houses of prostitution, yet they also admit that more than ten years later, in 1864 (R., 39), *he was a good business man*, and that in 1870, when he was perfectly sober, he would be sober and a competent business man (R. 38.)

If Mr. Nailor had the right and ability to amass his property when he was a reprobate, he had the same right to dispose of it as he saw fit, while he continued a reprobate.

As we said before his widow's rights are not at all affected by his conveyances, and she is not a proper party to this suit.

We do not believe this court will assail the titles to landed property upon the shadowy and uncertain evidence of the complainants which we now proceed to consider.

Besides the complainants' witnesses, whose evidence we have already discussed, there was a number of other witnesses in their behalf. We cannot give a summary of the evidence of all these witnesses, so we have concluded to consider only the *first fifteen in the order they appear in the record*, assumingand believing that these will furnish a fair sample of the remainder. We can, of course, only give, very briefly, the *gist* of their *opinions*. We cannot give the narration of facts upon which these opinions are based. These opinions go to Mr. Nailor's *mental capacity* to execute the conveyances. As we said before there is no evidence of *undue influence* on the part of the defendant except that which may be inferred from her co-habitation with Mr. Nailor, from her uniform kindness and gentleness towards him, and from her constant and unremitting attention to his wants and comforts. ~~We admit that when he asked for a "toddy" she sometimes brought it to him.~~

The first witness is John H. Clarke (R., 66–71). He testifies as follows:

I am in the tailoring business; I knew Allison Nailor from 1862 or 1863, up to the time of his death; I saw and talked with him every few days; he drank a great deal the most of his time. For the first eight or ten years, (*i. e.*, from 1862 to about 1870,) he was under the influence of liquor the most of the time.

Question. Was Mr. Nailor in the habit of using liquor when you first knew him; and if so, to what extent (*i. e.* in 1864)?

Answer. He used to get very drunk; he would get down and have to be carried upstairs. This was pretty often; you would hardly find him sober when I first knew him, *unless you caught him early in the morning.*

Question. Did his habits of intoxication increase or diminish during the last years of his life?

Answer. During the last two years they diminished a great deal.

Question. Was he more addicted to the use of liquor in 1864 and 1865 than from 1869 to 1875?

Answer. More in 1864 and 1865. I had more chance of seeing him then; he lived in the rear of my stable (R., 69).

Yet one of the complainants (James W. Clarke), testifies that in *1864* Mr. Nailor was a *good business man* (R., 40).

This witness testifies that in his opinion Mr. Nailor has not been competent to do any business to the amount of $200 *for the last four or five years* (R., 68).

The next witness is *Charles F. M. Bruce, a hackman* (R., 71–78); cannot read or write; knew Mr. Nailor intimately for thirty-five or forty years (R., 71).

Question. What were Mr. Nailor's habits as to the use of intoxicating liquor during the time that you knew him?

Answer. Sometimes when I met him he would be sober, and sometimes he would be drunk (R., 73).

This witness is of the opinion that Mr. Nailor's mind was not in such condition in March, 1878, as to transact important business, because he was always drinking (R., 74).

The next witness is Jacob Poss. (R., 78-81, 394-396.) He says: I am a livery-stable keeper. Was at one time a *bar-tender* with my uncle. (R., 394.) Knew Mr. Nailor for twenty years.

Question. What were his habits in relation to the use of intoxicating drinks *during the time you knew him?*

Answer. He was about nine-tenths of his time drunk.

Question. How were his habits in this particular the last four or five years of his life, as compared with what they were when you first knew him?

Answer. He drank more. When I first knew him he was more capable of attending to business than he was in latter years.

Question. What were his habits when you first knew him (*i. e.*, about 1859?)

Answer. He was then quite a shrewd business man.

(R., 79.)

The witness thus testifies that about *1859* Mr. Nailor was nine-tenths of the time drunk, yet, he says he was then *quite a shrewd business man.*

He further testifies that, in his opinion, Mr. Nailor was not competent to make a disposition of a large quantity of his real estate in 1878.

The next witness, *Thomas E. France*, says he is with W. T. Nailor, (one of the complainants), at his livery stable, and that in his opinion Mr. Nailor was not competent in March, 1878, to make deeds of his real estate. (R. 82–86.)

The next witness, *Delaware Hudnell*, says he is in the grocery business; that he *once kept a restaurant* on D street, and that in March, 1878, he did not think Mr. Nailor was competent to make, understandingly, deeds disposing of his real estate. (R. 86–89.)

The next witness, *Alexander Leadingham*, says he is a livery stable keeper, and that, in his opinion, Mr. Nailor was not competent in March, 1878, to convey understandingly large quantities of his real estate, nor was he so competent for the last eight or ten years. (R. 90–92.)

Question. Did you see him intoxicated as often during the last two years of his life as before that time?

Answer. I couldn't say that I did.

Question. During the last year of his life how often did you see him intoxicated?

Answer. I couldn't say that I saw him intoxicated at all during the last year.

Question. During the second year before his death, how was it?

Answer. That I couldn't say.

Question. Did you see him intoxicated at all during the second year?

Answer. I couldn't say, positively.

(R., 92.)

Yet this witness testifies that he knew Mr. Nailor since 1865, and that during the last seven or eight years he would see or meet Mr. Nailor sometimes every day, sometimes every week, sometimes in a month. (R., 90.)

The next witness is *Park D. Mills.* He says: *I am a boatman.* I knew Mr. Nailor about three years. During the time I was acquainted with him I saw him often as every other day, on an average. He drank to the extent that he got under the influence of liquor *once in a while*, the same as I do myself, and was then incapable of transacting any business. I have seen him when I thought he was under the influence of liquor. In my opinion, at the time I knew him, I do not think he was competent to transact important business, such as disposing of large quanties of real estate. (R., 92–94.)

The next witness is *James Belt.* (R., 95-97.) He testifies: I am a carpenter. I have known Mr. Nailor for 20 years. I knew him as well as anybody did. I lived in one of his houses for years. I saw him during the last eight years of his life nearly every day. I lived in the same neighborhood with him. (R., 95.)

Question. What effect, if any, did his excessive drinking have upon his health and mind during the latter part of his life, say the last two or three years?

Answer. I don't think he had his right mind *when he was drinking.* He would curse the best friend he had in the world.

Question. State whether, in your opinion, in March, 1878, Mr. Nailor was in such a condition, physically and mentally, as to render him competent to understandingly transact important business, such as disposing of, transferring, or conveying large portions of his real estate, say to the value of $20,000 to $30,000?

Answer. I think he was not.

Question. State how it was, in your opinion, seven or eight years ago, *say in the fall of 1872?*

Answer. I think he was all right then. (R., 96.)

We have heretofore stated that some of the complainants' witnesses draw a distinction between Mr. Nailor's competency to make a deed in 1878, and his competency in 1872. This witness, Belt, is one of them. How they draw the line we don't see, for Mr. Nailor seems to us to have been essentially the same man, morally and mentally, twenty-five years before as he was at the time of his death. Still a line has to be drawn somewhere. We will see as we advance that some of the complainants' witnesses bring the line of Mr. Nailor's competency nearly, if not quite, up to the time of his executing the three deeds in 1878. Of course, if the opinion of this witness is to be relied on, the first deed in controversy made in the fall of 1872 must be held valid.

The next witness is *John F. Seitz* (R, 97–99). He is a baker. He says: I knew Mr. Nailor for thirty years about as intimately as any one could know another in business. I knew him as intimately during the last seven or eight years of his life as I did before.

Q. State whether, in your opinion Mr. Nailor was competent, say in March, 1878, to transact understandingly important business, such as the disposition of a large portion of his real estate by transferring it by deed or otherwise?

A. I don't think he was, *from 1876 down to his death*, knowing him as I did prior to that and his business qualifications, he changed a great deal (R., 98).

The preceding witness (Belt), brought the competency of Mr. Nailor down to 1872; this witness, Seitz, brings it down to *1876*. We will see as we advance if we cannot get it still nearer to *1878*.

The next witness is *John T. Price*. He says:

I am in the livery business; I knew Mr. Nailor for twenty-five years, and did business with him twenty five years ago. I don't think *at times* during the last two or three years of his life he knew what he was doing. At times I have seen him *during the last two or three years* of his life, *and he was very pleasant*, and then again, I have gotten out of his way to keep from meeting him.

Question. What was his condition as to soberness or drunkenness on those occasions?

Answer. Sometimes he appeared to be all right, and sometimes he had been drinking, and I got out of his way because I thought he did not know what he was doing.

Question. State whether in your opinion, Mr. Nailor was in such condition physically and mentally that he was competent, say in the latter part of March, 1878, to transact important business, such as conveying or transferring a large quantity of real estate worth, say, $20,000 or $30,000?

Answer I don't think he was competent to transact any business *for the last two years*, or else he would not have done as he did. (R., 100, 101.)

The next witness is *George Seitz* (R., 101, 103), a baker. He says: Mr. Nailor was not capable to transact any business when I last saw him. (R., 105.)

The next witness is *William B. Reed*, a grocery merchant (R., 103). He says that, in his opinion, Mr. Nailor was not competent in 1872 to convey his real estate *at the*

times he saw him (R., 106). He also says that he has had no conversation with him *directly* since that time. Is also of opinion that he was not competent in 1878. (R., 106.)

The next witness is *Patrick Brennana, a hack-driver*. He says he has had no conversation with Mr. Nailor since 1871, and hasen't heard him converse with others since then. (R., 106–109.)

The next witness is *Henry L. Turner*. He says that he keeps a boarding house, and was at one time *interested in a gambling house*. (R., 111.)

Question. State whether, in your opinion, say in the latter part of March, 1878, Mr. Nailor's mind was in such condition as to enable him to understandingly transact important business, such as conveying or disposing of real estate to the value of 20 or $30,000?

Answer. I don't think it was, sir; I shouldn't have liked him to do any business for me at that time.

Question. What is your opinion of his competency to transact business, say in November, 1872?

Answer. I *hardly think* he was competent at that time. (R., 110.)

The next witness is *Job W. Angus*, a builder. He says: I have known Mr. Nailor 25 years. I knew him intimately until 1872 or 1873. I have been away for the last five years. I left here in 1874. *I did not see him often after the Fall of 1870. I seldom talked with him more than to pass the time of day. I only saw him once during the last year that he lived.* I had been home about six months when he died (R., 113). In my opinion, I should think he was not competent to convey real estate in the Fall of 1872. (R., 114.)

We have thus disposed of the first fifteen witnesses for the complainants.

It is upon testimony like *this* that an effort is made to deprive a man of the right to dispose of property which he has earned by his own industry and skill.

We will here conclude our summary of the evidence and will proceed to consider the law applicable to the case.

The Law.

The complainants seek to have the four deeds set aside on the following grounds:

1. Because the deeds were obtained by the fraud and undue influence of the defendant.
2. Because, at the time they were executed, the grantor was insane, and mentally incompetent to make them.
3. Because there was no good or valuable consideration, and the consideration was illegal.

These grounds will be considered in their order.

We will here repeat that the complainant, Rachel T. Nailor, the widow of Allison Nailor, senior, *is not a proper party to this suit.* Her dower right in the property in controversy is not questioned. Her interests are not affected.

We also repeat that we will assume there will be no question as to the validity of the deed dated *November 27, 1872.* Our attention will, therefore, be principally directed to the three deeds dated *March 29, 1878.*

The evidence shows that Mr. Nailor, *for twenty-five years* before he made the acquaintance of the defendant, was "a drinking man," yet, during that period, he was shrewd, enterprising, and money-making, and accumulated his property. The evidence further shows that from a period *certainly anterior to 1854* he was a man of dissolute life with women. The evidence further shows he made the acquaintance of the defendant *in November, 1869.* At the time this acquaintance was made the defendant was *virtuous.* She says so in her sworn answer; the *complainants'* witness, Mrs. Schofield, testifies she *believes she was then virtuous;* Mr. Nailor subsequently said he took her when she was "innocent," and meant to provide for her;

and other witnesses testify that, before that time, she was a decent, well-behaved, respectable girl; *and there is nothing in the record contrary to all this.* We, therefore, have a right to assume, and do assume as a postulate, that Kate Conley was decent, respectable, and *virtuous* up to the time she first had illicit intercourse with Mr. Nailor. An effort has been made to show that, *long after the acquaintance was formed*, and while they were living together, she was unfaithful to him. We have stated and criticized the evidence on this point, and we believe we are fully justified in stating that no credit should be attached to it. But even if the charge were true, it is inadmissible and irrelevant, sheds no light on this case, and should have no weight in determining it.

I.

About three months antecedent to the making of the three deeds, Mr. Nailor made a *will*, wherein he devised *directly* to his two illegitimate children and to the defendant *the same lands* that were subsequently *conveyed* by the three deeds of March 29, 1878. None of his other property is mentioned in the will. This will is dated December 31, 1877, and, in the absence of any satisfactory proof to the contrary, it will be conclusively presumed to have been made on the day of its date. The deeds were subsequently made lest an effort might be made by his heirs after his death to break the will. (R., 231, 232.) The deeds, if valid, operated, of course, as an *implied revocation* of the will. Still, if it should be held that the deeds are *invalid*, because the grantor was *demented* at the time he made them, then the will immediately springs into life, *unless* it is *also* held that the will, too, is invalid, or that it is not in issue in this cause except as part of the *res gestæ* to show the validity of the deeds. The will is

fully *proved and established* by the testimony of two of the subscribing witnesses, one of whom testifies to the sanity of the testator at the time of its execution, and the other does so in an affidavit which he admits he executed. (R., 385–388; 398, 402.)

At common law the testimony of one of the subscribing witnesses, if credible, was sufficient to establish the due execution of a will, provided he testified that he saw the other witnesses subscribe it in his presence.

Dan vs. *Brown*, 4 Cow., 483;
Graham vs. *O'Fallon*, 3 Mo., 507.

It is true the will was put in evidence by the defendant as part of the *res gestæ* mainly to show Mr. Nailor's cherished design and purpose to make the settlement upon the children and her. Still *it has been proved in the cause*, and if the deeds should fail by reason of Mr. Nailor's alleged *dementia*, the will, *if unimpeached*, excludes the heirs from the relief sought in their bill. They have no interest in the subject-matter of the deeds, *or in their cancellation*, even if they are invalid. *Their title was completely divested by the will*, and they have no interest in the property, and no standing in court.

The will, of course, was never admitted to probate in the Orphans' Court of this District, or in Maryland, as the defendant claims under the deeds. Even if it had been, as it relates exclusively to *lands*, the fact of the probate would have given it no weight in this suit.

The English law, the law of this District, and the law of Maryland, are the same.

The English law is thus laid down by Mr. Greenleaf:

"In England the ecclesiastical courts have no jurisdiction whatever over wills, *exept those of personal estate;* and hence the probate of wills by the sentence and decree of those courts is wholly inoperative and void, except as to per-

sonal estate, being *as to the really not even evidence of the execution of the will.* The validity of wills of real estate is there cognizable only in the courts of common law, and in the ordinary forms of suits."

2 Green. Ev., Vol. II., Sec. 672;

Smith vs. *Steele*, 1 Har. & McH., 419.

This doctrine is supported in *Darby's Lessee* vs. *Mayer*, 10 Wheat., 465. The Court say:

"That the law of Maryland with regard to the evidence of a devise in ejectment is the common law of England is clearly recognized in the case of *Smith's Lessee* vs. *Steele*, 1 Harris and McHenry, 419."

We claim, therefore, that if the deeds should be overthrown, the will ought to take effect and defeat the bill, as it was established *incidentally* in the cause.

Mr. Justice STORY says:

"It has been already stated in another part of these commentaries that the proper jurisdiction as to the validity of last wills and testimony, belongs to other tribunals. When a will respects personal estate it belongs to the ecclesiastical courts; *and when it respects real estate*, it belongs to the courts of common law. But, although this is regularly true, and Courts of Equity will not in an adversary suit entertain jurisdiction to determine the validity of a will, yet, whenever a will comes before them *as an incident in a cause*, they necessarily entertain jurisdiction to some extent over the subject; and if the validity of the will is admitted by the parties, *or if it is otherwise established by the proper modes of proof*, they act upon it *to the fullest extent.* If either of the parties should afterwards bring a new suit to contest the validity of the will so proved the Court of Equity, which has so determined it, would certainly grant a perpetual injunction."

2 Story, Eq. Juris., Sec. 1445.

At any rate, the will and the three deeds are so closely interwoven in the evidence, and are so near in point of

time, that their execution may be regarded as almost *one contemporaneous act.* We will, therefore, makes no attempt to draw the distinction, if any exists, between the undue influence and incapacity that would vitiate a deed *inter vivos*, and that which would vitiate a will, but will assume that the *same proof* would be required to overthrow one as would be required to overthrow the other.

II.

There is no evidence whatever of *fraud* on the part of the defendant, and there is no evidence of *undue influence* on her part. The only influence exerted by her was that which may be inferred from Mr. Nailor's co-habitation with her, from her gentleness and kindness towards him, and from her constant and unremitting attentions to his wants and comforts. This is not *undue influence* in the eye of the law.

In *Eckert* vs. *Flowry*, 43 Penna. St. R., 51, Strong, J., delivering the opinion of the Court, says:

"Now, that is *undue influence*, which amounts to constraint, which substitutes the will of another for that of the testator. It may be either through threats or fraud, but, however exercised, it must, in order to avoid a will, *destroy the free agency of the testator at the time when the instrument is made.* In the language of Woodward, J., in *McMahon* vs. *Ryan*, 8 Harris, 329, "it must be a present constraint, operative on the mind of the testator *in the very act* of making the testament."

In *Roe* vs. *Taylor*, 45 Ill., 485, it is *held* that, to invalidate a will on the ground of fraud or compulsion, it must be of such a character as to destroy the testator's free agency. Mere honest argument or persuasion, and such influence as one person may properly obtain over another are insuffi-

cient. *Nor will the fact alone that the principal devisee has had illicit sexual intercourse with the testatrix invalidate it.*

Undue influence must amount to constraint; mere solicitation or persuasion will not vitiate a will.

Sutton vs. *Sutton*, 5 Harr (Del.), 459;
McDaniel vs. *Crosby*, 19 Ark., 533.

In *Farr* vs. *Thompson*, Cheves, S. Car. Law R., 37, it is *held* that a will legally executed shall not be set aside on the mere ground that its provisions are in favor of a mulatto woman, with whom the testator, *a hard drinker* and paralytic, had lived in disgraceful intimacy, who had had great influence over him; and of whom he had sometimes appeared to be in personal fear. There must be proof, not only of influence, *but that it had been expressly and unlawfully brought to bear upon the will.* A disposition of property, though ever so capricious and unreasonable, will not be avoided on that ground alone.

Earle, J., in delivering the opinion of the Court of Appeals in this case, says:

"The testator was an intelligent man of strong mind, not yet greatly advanced in years, *and only impaired in the vigor of his understanding by intemperance.* He had no lawful wife, nor children, and had not lived in amity, at least not in continued amity with his relations, and he has given his property to a stranger to his blood. *This he surely had a right to do*, and this is all that appears upon the face of the will."

In *Higgins* vs. *Carlon*, 28 Md.. 115 (1867), it is *held* that the law concedes to a man of sound mind the right to dispose of his property *in any manner he may deem proper*, consistant with its policy; and it is no valid objection to a will that a testator gave his property to *strangers to his*

blood, provided he was mentally competent, and was free from undue influence at that time.

This is also the law of the District of Columbia.

In *Stevenson* vs. *Stevenson*, 33 Pa. St., 469, it is held that a man who is of sound mind is competent to make his will which would be valid, though it gave *all* his property to one not his relative.

In *Howell* vs. *Troutman*, 8 Jones' Law, N. Car., 304, where an alleged testator in a paper writing propounded as his will, devised and bequeathed certain property to the child of his housekeeper, a white woman, which child was proved to be a mulatto, *but, which the mother had induced him to believe was his*, it was *held*, that this furnished *no evidence* to support the allegation that the will was obtained by fraud and undue influence.

The opinion of the Court concludes as follows:

"The truth is that the old man, being childless *by his wife*, took a strong fancy to the child of his housekeeper, and, whether it was his or not, *he had a father's love for it*, and our law *imposes no prohibition upon a man to prevent him from bestowing his property upon the object of his affection.* Affection or attachment, as Sir John Nichol said, 'would be a very strong ground of support of a testamentary act.'"

In a feigned issue to determine the validity of a will, it may be shown by the contestants that, at the time the will was made, the testator was living in open adultery with the mother of the children to whom he had devised the *bulk* of his estate. But that fact, taken in connection with the devise, *raises no presumption of law of undue influence.* But it is left *as a question of fact* for the jury.

Dean vs. *Negley*, 41 Penn. St., R. 312.

III.

We now come to the question of Mr. Nailor's *mental competency* to make the deeds.

We desire here to call attention to the fact, that, *during the last year of his father's life*, the complainant, W. T. Nailor, took a lease from him for the stables he now occupies for thirty years at $50 a month; and also, to state the fact (heretofore omitted) that Mr. John Selden, a prominent lawyer, and a counsellor of this Court, testifies that about 1873, an ejectment suit was brought by him, in which there were three trials, and at each of these trials Allison Nailor, senior, appeared as a witness, and was cross-examined at *great length*, and that there was nothing, either in the nature or tendency of his evidence to induce him to suppose that Mr. Nailor's mental faculties were, or had become, *at all impaired.*

It is only claimed by the complainants that Mr. Nailor's alleged mental weakness and incapacity arose from the continued and excessive use of intoxicating drink, and from sexual intercourse. It is nowhere shown, or attempted to be shown, either in the pleadings or the evidence, that there was *any other cause* of his alleged incompetency. It is not claimed there was any mental or physical weakness, incompetency, or insanity, except such as arose from these causes. But for these, they admit, he would have been as sound as any man. It is proved beyond doubt that he was *sometimes sober*, and he was sober when he made the deeds and the will.

The will and the three deeds are so near in point of time (three months' interval) that their execution may be regarded as almost *one contemporaneous act.* We will therefore assume that the same degree of proof of mental incompetency would be required to overthrow the deeds as would be required to overthrow the will. Now, what is the law?

In a note to *Jarmon on Wills*, 5th Am. Ed., 1880, edited by Randolph & Talcott, vol. 1, page 97, the law is thus stated as to *drunkenness:*

"Nor will any presumption of incapacity be held from proof of the fact that the testator had, at some time previous to the execution of the will, been absolutely incapacitated for a testamentary act, or ever for the making of a contract, *or the performance of business.* The rule is entirely different from that in cases of *mania or insanity*, the rule being such that the *onus* is not placed upon the proponent of the will by the establishment of the previous existence of delirium, while, in other cases of testamentary incapacity, the proof that the testator had been incompetent throws the burden of proof on the proponent to show that at the time of the *factum* of the will the testator was competent. The reason for this change in the rule is both evident and satisfactory. The duration of delirium from this cause (drunkenness) is temporary, *and will cease with the cause*, if it is not prolonged or aggravated by a repetition of the exciting act, and in ordinary cases where the exciting cause is removed and the force thereof is spent, the person so affected is competent for all the ordinary duties of life. The prevailing rule both at law *and equity* is, that the acts of such a party will not be held to be invalid unless it be proved that he was so deprived of his faculties as to be incapable of understandingly performing the act, or of giving a free consent, or was so far overcome by intoxication as to be practically under the control of others."

In *Wheeler* vs. *Alderson*, Hagg. Ecc. 602, it was *held*, that when no fixed and settled delusion is shown, and that the extravagant acts of the testator are accounted for by excitement arising from the excessive use of liquor, while at times the mind was sound, it must be proved, in order to avoid a will, that the deceased was so excited by liquor, or so conducted himself *during the particular act* as to be *at that moment* legally disqualified from giving effect to such an act.

In *Ayrey* vs. *Hill*, 2 Add. 206, it appeared that the testator was *an habitual drunkard*, who, when under the excitement of liquor, acted in all respects like a madman. Yet he was not otherwise deranged, or under any other circumstances insane. The will was sustained, as it was shown that, at the time of the *factum* of the will, the testator was not under the influence of liquor.

In *Gardner* vs. *Gardner*, 22 Wend., 526, Cowen, J., in delivering the opinion of the Court, says:

"I read of no insanity among the proofs, *except what arose from the excessive use of ardent spirits.* To whatever extent the constitution may be physically impaired by intemperance, the mind retains sufficient strength for the purpose of transacting common business when not clouded by actual intoxication. Cases were cited at the bar that, if *general insanity* be established, it will be presumed to continue, unless a lucid interval at the time of the transaction in question be clearly shown; but does proof that a man is in the habit of often getting drunk, *and has even been a drunkard for years*, make out a case of *general insanity* within the rule? The greatest drunkard is frequently sober, perhaps every day; his habit is in a degree under the control of himself and his friends; and during the few months that this man spent in the lunatic asylum, the *madhouse* as it has been called by way of emphasis, he was no doubt entirely sober, and, therefore, sane. If his unfortunate indulgence in the use of ardent spirits had resulted *in a settled derangement of mind*, independent of the immediate influence of drink (and if the proof comes short of this, a case of general insanity is not established), why was nothing of that kind shown, or attempted to be shown at the hearing? Why was not the family physician called? General sanity is the natural and ordinary condition of the mind, and is to be presumed till the contrary is established."

See *Duffield* vs. *Morris*, 2 Harr., (Del.) 375.

In *Peck* vs. *Cary*, 27 N. Y., 9, the will of a confirmed drunkard was established, though executed after a pros-

trated debauch, and the testator had drank several times in the course of the day. Denio, Ch., J., in delivering the opinion of the Court of Appeals in this case in 1863, says:

"The first inquiry relates to the mental condition and capacity of the alleged testator. For some time before making the will he had become excessively addicted to the use of spirituous liquors, had experienced several attacks of the peculiar mania arising from such habits; had more than once attempted to put an end to his existence by means of poisonous drugs, and he eventually committed suicide. Several of the witnesses stated, with some exaggeration, probably, that he *was scarcely ever sober. He indulged, moreover, in habits of licentiousness, not less destructive certainly to his moral character.* The statement of A. B. Peckham, one of the witnesses, with whom he had boarded a part of the season in which the will was executed, seems to present the fair result of the evidence upon this topic."

"His habits," he said, "were generally intemperate; when so he was quarrelsome and disagreeable. When getting over his *sprees* he was melancholy and low-spirited."

"It cannot, however, be maintained that he was either constantly intoxicated or suffering from reaction, for the same witness states that while at his house he was sober and strait for three or four weeks, and was then bright and rational.

"I am quite satisfied from a careful perusal of the voluminous testimony of which the above is a brief outline that the testator's mental faculties were not so far impaired as to render him incompetent to make a will, *or do any legal act*, when not under the *immediate influence* of intoxication.

"The next inquiry then is whether the alleged testator was intoxicated at the time of signing the instrument propounded. It is not to be understood that a will made by one who is at the time under the influence of intoxicating liquor is for that reason void. Intoxication is said to be temporary insanity. The brain is at the time incapable of performing its proper functions, but that species of derangement ceases when the exciting cause is removed and sobriety brings with it a return of reason. In order to avoid a will made by an intemperate person, it must be proved

that he was so excited by liquor, or so conducted himself *during the particular act as to be at the moment* legally disqualified from giving effect to it (Shelford on Lunacy, 276). The same learned writer says that incapacity arising from intoxication differs from ordinary lunacy in this, that the effects of drunkenness only subsist while the cause, the excitement visibly lasts. There is, he adds. scarcely such a thing as latent ebriety; so that a case of incapacity from mere drunkenness, and yet the man be capable to all outward appearance, can hardly arise; consequently, in cases of this description, all which is required to be shown is the absence of such excitement at the time of the act done as would vitiate it; for, under a slight degree of excitement from liquor, the memory and understanding may be as correct as in the total absence of any exciting cause (*Ib.* 304). A similar rule was laid down by Sir John Nicholl, sitting in the Prerogative Court in the case of *Ayrey* vs. *Hill* (2 Adams, 206), where the validity of the will of an habitual drunkard was in question."

In *Pierce* vs. *Pierce*, 33 Mich., 413 (1878), Campbell, C. J., delivering the unanimous opinion of the Court said:

"There is no foundation in reason or authority that we have found for holding that a will is void for the intoxication of the testator. Intoxication is a term capable of no precise definition, and there may be many degrees of it. If it exists to such an extent as to deprive a testator of the power of controlling his conduct and knowing what he is about, it will, of course, have a very evident bearing on his capacity. But if, on the other hand, the act which he does is one which his intoxication does not prevent him from doing with comprehension, it cannot, of itself avoid it."

In *Thompson* vs. *Kyner*, 65 Penna. St., R., 368, it is held that old age, failure of memory, *or habitual drunkenness* will not *per se* constitute incapacity to make a will and that weakness alone will not invalidate a will, if there be mind and memory enough to understand the subject in hand, and to direct the disposition of the property intelligently.

In *Turner* vs. *Hand*, 3 Wallace, Jr., (3d Circuit), Grier, J., says:

"Insanity at the time of making an alleged will must be proved in order to render the instrument void. A man must have memory, but his memory may be very imperfect; it may be greatly impaired by age or disease. He may not be able at all times to recollect the names, the persons, or the families of those with whom he had been intimately acquainted; may at times ask idle questions, and repeat those which have been before asked and answered, and yet his understanding may be sufficiently sound for many of the ordinary transactions of life. He may not have sufficient strength of memory and vigor of intellect to make and to digest all the parts of a contract, and yet may be competent to direct the disposition of his property by will."

See *Stevens* vs. *Vaneleve*, 4 Wash., 262.
Harrison vs. *Rowan*, 3 Wash., 570.

It is not necessary that the testator, at the time of making the will should be capable of *managing business generally*, if he understands what he is then doing.

Kinne vs. *Kinne*, 9 Conn., 102.
Stubbs vs. *Houston*, 33 Ala., 555.
See *Julke* vs. *Adam*, 1 Redf., (N. Y.) 454.

The *testamentary witnesses*, *their opinions*, and the facts they state as occurring at the time of the execution of the writing, are to be *particularly regarded by the Court.* The opinions of the witnesses *other than the testamentary*, as to the capacity of the testator, are to be received as the *slightest* kind of evidence, except so far as these opinions are based on facts and occurrences which are detailed before the Court.

Whitenack vs. *Stryker*, 1 Green's Ch. (N. J.), 8.

There are two cases decided in this Court which will, probably, be cited by the complainants in support of their positions, to which we desire to call attention. The first is *Harding* vs. *Handy*, 11 Wheat., 103; the second is *Allore* vs. *Jewell*, 94 U. S., 506. In each of these cases the deeds of a grantor, after his or her death, were set aside, at the suit of the heir. The evidence, in each case, is stated in the opinion of the Court, and it shows, in the one case, clearly and unmistakably, that the grantor *had a confirmed and settled dementia, arising from a sudden stroke of paralysis;* and in the other, *that a person of great weakness of mind bordering on lunacy, was overreached by unfair and undue influence.*

The facts in these two cases bear no sort of resemblance to the facts in the case before the Court.

In *Allore* vs. *Jewell*, it appears that the deceased, at the time the conveyance was made, was between sixty and seventy years old, and confined to her house by sickness, from which she never recovered. She lived alone, in state of great degradation, and was without regular attendance in her sickness. *There were no persons present with her at the execution of the conveyance except the grantee, his agent, Dodsen, and his attorney.* She had low and filthy habits; *she was so imperfectly clad as at times to expose immodestly portions of her person.* She believed in dreams, *and imagined she could see ghosts and spirits around her room, and claimed to talk to them. She was incoherent in her conversation,* passing suddenly and without cause from one subject to another. She used vulgar language, made immoral gestures, *talked strangely,* and made singular motions and gestures in her neighbors' houses, and in the streets. The condition of the deceased was not improved during *her last sickness.* The testimony of her *attending physician* leads to the conclusion that her mental infirmities *were aggravated by it.* He states *that he had studied her disease, and for many years had considered her partially insane,* and that, in his opinion, she was not competent, *during her last sickness,* to understand a document like the instrument executed. *This physician informed the grantee through his agent Dodsen,* who had inquired of the condition and health of the deceased, and had stated that efforts had been made to purchase her property; that in his *opinion she could not survive her sickness, and that she was not in a condition to make any sale of her property in a right way.* Through this agent, Dodsen, the trans-

action for the purchase of the property was conducted. The deceased understood English imperfectly, and Dodsen undertook to explain to her in French the contents of the paper she executed.

The grantee, his agent Dodsen, and his attorney went to the house of the deceased in her last sickness when the deed was executed. *There were no persons present with her at the execution of the conveyance except these three.* Dodsen had previously informed the grantee that she would not sell the property, yet he took a conveyance from her at a consideration which, under the circumstances, with a certainty almost of speedy decease was an insignificant one compared with the value of the property.

In view of these facts and circumstances *Mr. Justice Field*, delivering the opinion of the Court, says:

"*In view of the circumstances stated*, we are not satisfied that the deceased was, at the time she executed the conveyance, capable of comprehending fully the nature and effect of the transaction. She was in a state of physical prostration; and from that cause, and her previous infirmities, aggravated by her sickness, her intellect was greatly enfeebled; and, if not disqualified, she was unfitted to attend to business of such importance as the disposition of her *entire property*, and the securing an annuity for life. Certainly it is that, in negotiating for the disposition of the property she stood, in her sickness and infirmities, on no terms of equality with the defendant, who, with his attorney and agent, met her alone in her hovel to obtain the conveyance.

"It is not necessary, in order to secure the aid of equity, to prove that the deceased was at the time insane, or in such a state of mental imbecility as to render her entirely incapable of executing a valid deed. It is sufficient to show that, from her sickness and infirmities, she was at the time in a condition of great mental weakness, and that there was gross inadequacy of consideration for the conveyance. From these circumstances, imposition or undue influence will be inferred. In the case of *Harding* vs. *Wheaton*, reported in the 2d of Mason, a conveyance executed by one to his son-in-law, for a nominal consideration, and upon a verbal agreement that it should be considered as a trust for the maintenance of the grantor, and after his death for the benefit of his heirs, was, after his death, set aside, except as

security for actual advances and charges, upon application of his heirs, on the ground that it was obtained from him when his mind was enfeebled by age and other causes. 'Extreme weakness, "said Mr. Justice STORY, in deciding the case, 'will raise an almost necessary presumption of imposition, even when it stops short of legal incapacity; and though a contract, in the ordinary course of things, reasonably made with such a person, might be admitted to stand, yet if it should appear to be of such a nature as that a person could not be capable of measuring its extent or importance, its reasonableness or its value, fully and fairly, it cannot be that the law is so much at variance with common sense as to uphold it." The case subsequently came before this Court; and, in deciding it, Mr. Chief Justice MARSHALL, speaking of this, and, it would seem, of other deeds executed by the deceased, said: 'If these deeds were obtained by the exercise of undue influence over a man whose mind had ceased to be the safe guide of his actions, it is against conscience for him who has obtained them to derive any advantage from them. It is the peculiar province of a court of conscience to set them aside. That a court of equity will interpose in such a case is among its best settled principles. *Harding* vs. *Handy*, 11 Wheat., 125."

The doctrine thus clearly and forcibly enunciated by Mr. Justice FIELD, we recognize to the fullest extent. But the facts in the case before the Court do not call for its application, *and do not come within its principle.*

Mr. Nailor had strength of body and strength of mind; he was not influenced, controlled, or overreached *in the slightest degree*, and the settlements he made were legal, just, and fair, *and such as he was morally bound to make*, as will hereafter appear.

After the making of the last three deeds, he made contracts for the construction of a building on one of his farms, went again and again to the country, eight miles from the city, to supervise and give directions for the work, and managed this and other matters with skill, intelligence, and forethought. (R., 272, 273, 274, 278, 279, 318, 319, 321, 325, 326, 371, 375.) During the last three or four years of his life he was seen by two witnesses *chopping wood for kindling*

the fire. (R., 228, 269.) All the physicians examined state that he was mentally sound and competent. (R., 204, 205, 402.) After the execution of the last three deeds, Dr. Barker visited his house to attend the two children. He testifies:

"Mr. Nailor was not, to my knowledge, at any time when I saw him under the influence of intoxicating liquor. I thought his mind was about as sound as you will find in a man of his age. I do not think there was any appearance of insanity or imbecility in his manner, conversation or action." (R., 203–205.)

"My conversations with Mr. Nailor were generally short, *except one*, just previous to the death of the little boy. I remained at the house nearly all night, and he was talking to me nearly all the time I was there." (R., 204–206.)

This conversation took place more than four months after the execution of the last three deeds.

Dr. Hammett states *in an affidavit*, in substance, as follows:

"I was first called to prescribe for Mr. Nailor in 1874, and I attended him professionally thereafter, and had every opportunity of judging of his mental condition. In my opinion he was a man of sound mind, and entirely competent in all respects to manage his own affairs. I have never seen Mr. Nailor under the influence of liquor. In my opinion he was a man of clear mind and judgment." (R., 398, 402.)

Besides, we have the testimony of one of the subscribing witnesses of the will (Mr. Douglass), and that of the notary (Mr. Callan) who took the acknowledgments of the last three deeds, to the effect that Mr. Nailor was sober, and that his mind was sound, *at the times they were executed.* (R., 385–388; 207–208.)

Superadded to these we have a long line of witnesses, *about twenty-two in number*, who testify to Mr. Nailor's mental competency and soundness. The evidence is simply conclusive on the point. (R., 211–389.)

IV.

If we may be allowed to express a very candid opinion, we think the idea that Mr. Nailor was incompetent to make the deeds is—nonsense. He was as competent as any man in the community. He had strength of body and strength of mind. He was seen on the street two or three weeks before he died. If, after the making of the three deeds, any man had attempted to overreach him in a horse trade, he would soon have been convinced of his folly. As to fraud and undue influence there is no evidence to support it; so we come now to the last question—Consideration.

Mr. Nailor made the acquaintance of the defendant in November, 1869. He was then about 53 or 54 years old. Kate Conley was then a girl of twenty-one or twenty-two. In that month he had illicit intercourse with her. After that he visited her from time to time until the winter of 1870, when he lefth is home *permanently*, being ordered to do so by his wife, so the answer states, with whom he lived unhappily (R., 18); and after that he and the defendant lived and cohabitated together until the time of his death. Four children were the fruit of this *liaison*. When the deed of 1872 was made, only one child had been born (Willie). When the three deeds were made in 1878 only two of the four were living, Willie and Edna, the other two having died in the meantime. When the three deeds were made he had lived with the defendant about eight years continuously. In 1873 his wife applied for and obtained a divorce, *a mensa et thoro*. So he was practically banished from his former home from that time. Even if he had wanted to return, there was a legal impediment in the way; but he had no desire to do so. *He frequently said he had not been fairly treated at home. He loved his two children, Willie and Edna. He was devoted to them.* And in 1878 he conveyed to the mother, in trust for them, real estate

said to be of the value of $16,000 (but really not worth half as much). This property was to go to the mother in the event of the death of the children. At the same time he made another deed conveying to the defendant, *for her own use*, real estate worth, say $5,000. The value of the property conveyed for the benefit of Willie in the deed of 1872 is said to be worth $3,000; thus making a grand total of $24,000 for all four deeds.

It is stated in the bill that Mr. Nailor's *real estate alone* was worth $150,000 *in* 1870. Although the complainant (W. T. Nailor) was *questioned* as to the value of his father's property *at the time of his death, he did not furnish the information.* So the presumption is that Mr. Nailor was worth at least $150,000 when he died, including that conveyed in the four deeds. All his property, then, conveyed to the mother and his two children was *less in value than one sixth of the real estate owned by him at the time of death, and all is subject to the widow's dower.* Now what was the *consideration* for these deeds?

A pecuniary consideration of one dollar is expressed in three, and five dollars in one, and none other. In the absence of fraud, undue influence, mistake, or incompetency the consideration could not be inquired into or questioned *by the grantor, if living; and his heirs, as privies in blood, stand in no better situation.* The deeds *imply* a consideration.

Mr. Washburn, in his great treatise on Real Property, says:

"In the absence of fraud towards the grantor, or his creditors, there does not seem to be any occasion to allege or prove any consideration in order to give effect to a deed of feoffment, or any proper common-law conveyance. Such a conveyance, properly consummated, operates to pass the title from the grantor to the grantee, which will be as effectual, if a voluntary gift, as if done for a valuable considera-

tion. Therefore a want or failure of consideration is no ground of avoidance of a deed."

Washburn on Real Property, (3d Ed., 1868), Vol. 3, p. 320;

Taylor vs. *King*, 6 Munf., 358;

Green vs. *Thomas*, 11 Me., 318.

Mr. Washburn further says:

"Although it is always competent to control the fact stated in the deed, as to the amount or thing paid, in a question involving the recovery of the purchase-money, or as a measure of damages in an action upon the covenants in the deed, *it is not competent* to contradict the acknowedgement of a consideration paid, *in order to affect the validity of the deed, in creating or passing title to the estate thereby granted.*"

Id., Vol. 3, p. 321.

He further says:

"The cases all agree, in effect, in this: that it is not competent to prove that no consideration has been paid, where one has been acknowledged in the deed, *for the purpose of impeaching the validity of the deed*, unless it is for the purpose of establishing fraud against the grantor. The true doctrine is stated in *Grout* vs. *Townsend* (2 Hill, 554, 557), that where a deed acknowledges the receipt of a consideration, *the grantor, and all claiming under him, are estopped from denying that one was paid.* They may disprove the payment for the purpose of recovering the consideration money, *but they cannot do so for the purpose of destroying the effect and operation of the deed.* The design of the clause acknowledging payment of consideration, is not to fix the precise amount paid, but to prevent a resulting trust in the grantor. It cannot be contradicted or varied by parol, so as in any way to affect the purpose of the deed, that is, *its operation as a conveyance.*"

Id., Vol. 3, p. 328.

Grout vs. *Townsend*, 2 Hill, 554, 557;

McCrae vs. *Purmort*, 16 Wend., 460;

Bank of the U. S. vs. *Houseman*, 6 Paige Ch., 526 ;
Goodwin vs. *Gilbert*, 9 Mass., 310 ;
Wilt vs. *Franklin*, 1 Binn., 502, 518.

But let us concede, for the sake of the argument, that the only consideration moving Mr. Nailor to make the deeds for the benefit of his illegitimate infant children was his love and affection for them, and his desire to provide for their sustenance and support; and that his motive for making the deeds for the benefit of the defendant, either contingently or directly, was his affection for her, and his desire to provide for her support, who had nursed him in sickness, managed his house, and administered to his wants and comforts for many years.

Now, in regard to the children, this consideration was not only good, but it was *meritorious. He did nothing more than it was his duty to do.* The laws of many of the States *compel* a man to support his illegitimate infant children.

In *Hook* vs. *Pratt*, 78 N. Y., 371, it is *held* that an undertaking upon the part of a putative father of an illegitimate child to pay to the mother a sum of money for the support of the child *is not illegal ;* and the obligation may be taken by the mother, payable to herself in her own right, or for the benefit of the child.

In regard to the *defendant*, as soon as Mr. Nailor made and delivered the deeds, the contract was executed, the transmutation of possession was effected, the seizin of the grantor was divested without recall.

But, it is claimed in the bill, that the only consideration for these deeds was the illicit cohabitation of the defendant with Mr. Nailor, and that such consideration was *illegal, and renders the deeds void.* This proposition is simply absurd. There is nothing whatever in the evidence to show that illicit intercourse was the consideration ; but, even if it were true, it would not affect the validity of the deeds in

the least. There is not an authority in England or in this country to support the doctrine stated in the bill.

Remember! the deeds are *executed* contracts. But even an *executory* contract *under seal*, made in consideration of *past* cohabitation, *can be enforced*, as it is not *unlawful*, and a specialty imports a consideration which the party or his heirs are *estopped* from denying.

The law on this point is thus clearly stated by Mr. Story in his able treatise on contracts, issued in 1874:

"All contracts, whether they be by parol or under seal, to pay a certain sum in consideration of *future* intercourse (*premium pudoris et pudictiæ*) are utterly void. Some doubt formerly existed whether an agreement in consideration of a past *seduction* were not enforcible; but it has since been decided that such a consideration will not support a *parol* promise. The general maxim is: *Ex turpi contractu, non oritur actio. But a sealed contract*, made in consideration of *past* seduction and cohabitation, *or past cohabitation without seduction*, can be enforced, not merely because it is binding in honor and conscience, for such a reason is not legally sufficient, but because a specialty imports a consideration which, if not unlawful, both parties are estopped from denying; and a promise to support a bastard child is sufficient consideration to support an assumpsit. The reason why a different rule obtains in the last two mentioned classes of cases seems to be, that, in the former class, the contract is executory or continuing, and to permit it would be to offer a premium for *future* unchastity; but in the latter case, the contract being executed, the injury is done, and may otherwise be remediless, and there is no principle of law which forbids a party to redress a past injury, or atone for a wrong which he has already committed."

Story on Contracts (5th ed.), Vol. I, Sect. 670;
Jennings vs. *Brown*, 9 Meeson & W., 496;
3 Maule & Selwyn, 463.

There are two cases in which the principle laid down by Mr. Story is distinctly enunciated. The first is *Turner* vs.

Vaughn, 2 Wilson R., 339. This was an action on a bond. The condition was in part as follows: Now, the condition of this obligation is such that, in consideration of cohabitation had by the obligor with the obligee, he (the obligor) hath hereby agreed, &c., &c. To the declaration, a demurrer was interposed on the ground that the bond was given upon the illegal consideration of having cohabitated with the plaintiff, a spinster, and therefore the Court would not assist her to recover any debt thereupon.

Per Clive, Balhurst and Gould: There must be judgment for the plaintiff.

Clive, Justice: "I am in a court of Common Law, and not in an Ecclesiastical Court; if a man has lived with a girl, and afterwards give her a bond, it is good; suppose this bond had been given by the defendant to the plaintiff for being his mistress, it would have been good in point of law, although in a court of equity it would be postponed to *creditors*. Sir Joseph Jekyll, master of the rolls, in a case where *creditors* interfered against a bond of this sort, wished he could have given the lady the money on the bond, and where it is *premium pudoris a court of equity will not relieve against such a bond. This condition is incapable of an explanation to make the bond an illegal act.*"

Balhurst, Justice. "When a man is bound in honor and conscience, God forbid that a court of law should say the contrary, and wherein it appears the man is the seducer, the bond is good."

Gould, Justice. "The Court may take this for a lawful and conscientious consideration; we must presume that the defendant hath done what in honor and conscience he ought to have done, and that he thought himself a wrong-doer, and gave the plaintiff this bond to make her amends.

The next case is *The Marchioness of Annandale* vs. *Harris*, (2 Peere Williams, Ch., R., 432).

A man having seduced an innocent woman, and having had a bastard by her, gives her a writing obliging himself to pay 2,000 pounds after his death for the purchasing an annuity *for the woman* and child for their lives. The man dies. *Equity* will compel a performance of this agreement.

The Lord Chancellor: "If a man does mislead an innocent woman, it is both ransom and justice he should make her a reparation; but this case is stronger in respect to the innocent child, whom the father has occasioned to be brought into the world in this shameful manner, and for whom in justice he ought to provide; and though the child be now dead, yet the case is to be taken as it was when the bond and covenant were given, and when the child was living."

This decree was affirmed in the House of Lords.

In *Gay* vs. *Parpart*, 103 U. S., 676, a woman married a man by whom she became the mother of two children. She subsequently discovered that he had a wife living, from whom he had not been divorced. He then made to her an assignment of a mortgage. *Held*, that the assignment was a meritorious act, and not impeachable for immorality of consideration.

Mr. Justice MILLER, delivering the opinion of the Court, says:

"Notwithstanding the assault made upon Catharine Reed in reference to her chastity, *and the probability of illicit intercourse with Flaglor previously to this marriage, and the fact, much relied on, that she had an undue influence over him at the time the assignment was made*, we cannot doubt that, in executing and delivering it to her, he did a meritorious act, honorable and just, as the only atonement he could make for the deception he had practiced upon

her, and as placing in her hands the means of supporting the children of whom he was the father. It was not the case of a contract for *future* illicit intercourse of the class which the authorities hold to be against public policy, but an appropriate means of providing for the support of a woman whom he had married while he had a wife living, and of the children resulting from that marriage."

This case is not exactly in point, still it seems to recognize, by implication, a distinction between a *future* and a *past* illicit intercourse as a consideration. It also states that such intercourse probably took place *before the marriage*, and that the woman had an *undue influence* over him at the time the assignment was made.

In *Gray* vs. *Mathias*, 5 Ves. Ch., 286, Wm. Jamison cohabited with a woman for five years. During the cohabitation he exeeuted a voluntary bond to her. At the time of the execution of this bond, Mr. Jamison was about 40 years old. There was extraordinary evidence as to his being a man of weak understanding, *and given to excessive drinking, but the proof of intoxication did not apply at the time of the execution of the bond.* The evidence was also contradictory upon the fact whether the transaction was a voluntary act, or in consequence of her pressing him. Evidence was produced that *she had been a very loose woman before she lived with Mr. Jamison.*

This cause was argued by the most eminent equity counsel in England.

The bond was sustained.

MacDonald, Chief Baron, delivering the opinion of the court, says:

"As to the first bond, it is most clearly settled in cases where it has not been the direct point, and in cases where it has, as for instance in Dillon *vs.* Jones, where it was made a question whether there was any understanding for a continuance of the connection in the breasts of the parties,

though it was expressed, and the defendant being interrogated, said there was not; and therefore it was held good, though only voluntary. In Hill *vs.* Spencer that is most clearly laid down, and Lord Camden said, there is little difference between such a bond to a person in this unhappy situation, *and giving a sum of money.*"

Thus it appears that an *executory* contract, *under seal*, given for *past* cohabitation, does not render it *illegal*, and it may be enforced. There is no evidence in the record that the deeds were given to Mr. Nailor in consideration of *future* cohabitation, so we will not devote time to show that this fact, if claimed, *must be clearly and affirmatively established*, and every presumption will be against it. So the law is laid down in New York.

But even if the consideration for these deeds had been *illegal, the land could not be recovered back by the grantor or his heirs.*

In *Inhabitants* vs. *Eaton*, 11 Mass., 368, it is *held* that a conveyance of land made in consideration of a composition of a felony cannot be avoided by the grantor. (Per Parker, C. J.)

The leading case on this question is *White* vs. *Hunter*, 3 Foster (N. H.) It is just in point. It is held that it is a well settled rule of law, as to all acts and contracts which are *unlawful on account of their immortality, or their tendency to promote it*, or because they are hostile to the public policy, that the parties thereto are regarded as being *in pari delicto*, and that in all such cases, the of law is, *patior est conditio passidentis.*

Money paid upon a contract of the character before stated cannot be recovered back by the party who paid it.

There is no sound distinction between the case of money paid *and that of land conveyed upon such a consideration.*

In such case neither the grantor in his lifetime, *nor his*

heir after his decease, can recover possession of the land against the grantee. (Id.)

The fact is, it was the *duty* of Mr. Nailor to make provision for the defendant. She had lived with him continuously for seven or eight years. From 1873 until his death he was barred from his former home by a decree of divorce. She waited upon him, nursed him in sickness, kept his house, and administered to his wants. She was kind and gentle towards him, and an affectionate mother to his children. The best years of her young life were given to him. It was eminently proper, therefore, that he should make some provision for her support. His other children were all grown up, the sons in business and the daughters all married, when the three deeds were executed. He gave the defendant *directly* less than *one-thirtieth* of his estate. Including what he gave to her upon the contingency of the children's death, he gave her *less than one-sixth*. If the children had lived their titles never could have been successfully assailed, and the situation is not changed by their death. She says she made improvements on the property. Is she not to be reimbursed for this outlay? We do not believe this defenceless woman will be thrown penniless upon the world. We do not believe the land-marks of landed property can be shaken by the shadowy and uncertain evidence exhibited in this cause.

We must bring this brief to a close. We feel as though we ought to apologize for its protracted length, but the complex and voluminous record of 400 printed pages seemed imperatively to demand an extended discussion. As far as we have stated the evidence, we have endeavored to do so with careful accuracy.

W. D. DAVIDGE,
IRVING WILLIAMSON,
Attorneys for Appellant.

118-127.

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

CATHARINE CONLEY, *Appellant*,
vs.
RACHEL D. NAILOR, *et al.*

Supplemental Brief for Appellant.

We have cited on page 66 of our brief the case of *Dean* vs. *Negley*, 41 Penna. St. R., 312, in support of the position that the fact of illicit cohabitation *raises no presumption of law of undue influence*, but it is left as a *question of fact* for the jury.

As the doctrine of this case seems to have been misunderstood by the courts of at least one of the States (Iowa) we desire to explain its meaning as interpreted by the highest court of the State in which it was rendered.

In *Main* vs. *Ryder*, 84 Penna. St. R., 217, (1877) Daniel Minor Main abandoned his wife in New York, and four years afterwards commenced to live and cohabit in adultery with Rachel Ryder, and continued to live with her in such relation until the time of his death. By her he had several children. He died leaving a will, in which he devised to Rachel Ryder a farm for her life. His heirs, after

his death, brought ejectment against Rachel Ryder and others to recover the farm. The defendants claimed as devisees under the will.

At the trial below the court was requested to instruct the jury as follows:

"If the jury believe from the evidence that Daniel Minor Main had, for a long period of time, been living in unlawful intercourse with Rachel Ryder, * * * the law presumed the exercise of an influence upon the mind of the testator, which is unlawful, and therefore undue, and if the testator was at the time suffering from weakness of body or mind by reason of his last sickness, the presumption of law is against the validity of the will."

The Court *refused* the prayer.

The will was sustained.

The case was taken to the Supreme Court by writ of error. It was there heard before Agnew, C. J., Sharswood, Mercur, Gordon, Paxson, Woodward, and Sterrett, J. J. They unanimously decided there was no error below in refusing the prayer, *and the judgment below was affirmed.*

Mr. Justice Mercer, delivering the opinion of the Court, says:

"The fact that the testator lived with a woman to whom he was not legally married, and that she and their illegitimate offspring were the devisees of much of his property, are urged as creating a presumption in law that the will was executed under improper influences. The case of *Dean et al.* vs. *Negley et al.*, is cited to support this view. The opinion of the judge in that case expressly declares that the Court does *not* decide such relations create a presumption of law of undue influence; *but leaves the effect thereof as a question of fact for the jury.* To the same effect is the case of *Rudy* vs. *Ulrich et al.*, 19 P. F.

Smith, 177. *No clearly defined weight can be given to such testimony. Much must depend on the particular circumstances of each case.* It is an element undoubtedly to be considered."

In *Wallace* vs. *Harris*, 32 Mich., 380, the Court says:

Evidence that parties had lived together in adulterous intercourse is pertinent, *as one fact with others*, to prove the prevalence of undue influence, *but it is doubtful whether by itself* it ought to be regarded as a sure cause of such, influence, *or a positive ground of it in respect to property transactions between them.*

W. D. DAVIDGE,
IRVING WILLIAMSON,
Attorneys for Appellant.

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118-127

THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 223.

CATHARINE CONLEY, *Appellant*,

vs.

RACHEL D. NAILOR, *et al.*

Second Supplemental Brief for Appellant.

We have stated on page 48 of our brief that *there are twenty-two additional witnesses for the defendant*, an abstract of whose testimony is *not* given in our brief, and that the evidence of these witnesses is strong and convincing in her favor upon all the material issues, and especially upon the question of Mr. Nailor's mental competency to make the conveyances.

Now we deem it proper to give a brief abstract of the testimony of eleven of these twenty-two witnesses.

WILLIAM O'MEARA is a grocery merchant. (R., 298.) *About March, 1878*, he commenced to carry on business at 1310 D street, and had been carrying on business there continuously at the time his testimony was taken. (R., 298.)

This store is one of the houses conveyed in trust to Kate Conley for the benefit of the child Edna.

Mr. O'Meara testifies as follows:

"I rented this store from Allison Nailor, *Junior*. I knew Allison Nailor, *Senior*. I first became acquainted with him by his coming to my store to ask for rent. (R., 298.) I had been there some months when he came." (R., 298.)

(Of course, then, Mr. Nailor first went to the store *after the execution of the last three deeds.*)

"He came to me and said he wanted the rent for the store. I told him that I didn't know him; that I had never met him before, and consequently could not pay him. *He stated to me then that the property belonged to his children, and Mrs. Conley was the trustee, I believe, and that he was her agent, and only him and her had a right to that money.* I told him that I did not know anything about the arrangements of the property, whose it was, or anything about it, and that I had rented it from Allison Nailor, Junior, consequently couldn't pay him. He went away then, and came back again some time after that, and said if I didn't pay him the money he would put me out—give me notice to leave. I told him, well, he would have to go ahead; that it was rather hard coming on me; that if there was any difficulty he should go to the party I paid the money to—that is, Allison Nailor, Jr.—and not to bother me about it. After some words, I said: 'Well, Mr. Nailor, if you are entitled to the rent of this property, *you should get an order or something to entitle you to it;* that I would pay it to whoever had the right to it. *There was an order came, I think, from the Court.* I showed it to Allison Nailor, Jr., *and after that Allison Nailor, Sr., collected the rent for a short time*, and then there came another order from the Court directing it to be paid to Allison Nailor, Jr., again. (R., 298, 299.)

"*After this occasion, Allison Nailor, Senior, used to drop into my store, sit there and read the morning paper.* I con-

versed with him on different subjects. He used to talk, when he came in, on the topics of the day—what was in the paper. *He seemed to be all right mentally, from his conversation.* He used to bring his little boy (Willie) out with him occasionally. He seemed to be very fond of him, and talked a good deal about him. The little boy generally sat in the phæton, or carriage, that Mr. Nailor came out in. *He used to take home groceries occasionally from my store.* He used always to ask for an apple for the little boy—take one off the stand. (R., 299.)

I have seen him take a drink Generally, when he came out, as he was going, I would ask him to take a drink, and he would take one. I never saw him take more than one drink on any one occasion, *and sometimes he didn't take any.* He never bought any liquor from me. (R., 299.)

I took Mr. Nailor's receipt for the rent as agent for Mrs. Conley. (R., 300.) *He never demanded any rent from me after I got the order of Court to pay it to Allison, Jr.* I think Mr. Nailor brought the little boy with him the first time he came after the rent. (R., 300.)

Mr. Nailor continued to come to the store until he was taken sick and died. (R., 301.)

He was at the store off and on. *He used to come round after the morning paper.* After he moved over on 12th street he came oftener than when he lived on the Island (14th street). *When he lived on 12th street, I judge, he came over to my store once a week.*" (R., 302.)

(Mr. Nailor moved to 12th street in the fall of 1878, and died there the following January. His house was about two squares from the store.)

The witness continues:

"I recollect of seeing Mr. Nailor under the influence of intoxicating liquor *only once.*" (R., 302.)

GEORGE M. GRUBB testifies as follows: (R., 334–337.)

"I am a bricklayer. I have been personally acquainted with Mr. Nailor *for the last thirty years.* I did right smart

work for him. I have done some jobbing on his property on D street, *and put a story on a house on 14th street, for which Miss Conley paid me.*" (R., 334.)

(This is the house conveyed to the defendant in the first trust deed for the benefit of Willie.)

The witness resumes:

"I hardly missed a week without talking to him—*on business more than anything else. I always took him to have a good strong mind. I took him to be a very sane man. He was keen and shrewd and clear in bargaining. Two or three months before he died* I met him on the street and talked with him. We than talked about building and how it was coming on. I did not notice a bit of change in his mind at that time. (R., 334.)

"*During the period I was working for him I saw him every day.* He understood the kind of work I was doing and how it should be done. He would come up and look at the work. Years gone by he used to be a pretty hard drinker, but *for the last four or five years of his life I didn't see him drink so much.* The work I did on the 14th street house was done in 1873 or 1874. I was engaged in the work four days. I had two or three hands. *During the last four years of his life I used to see him two or three times a week, and sometimes every day,* and then again, I would miss him for a week or two. At times he appeared to be sickly; sometimes he seemed right well. I saw no change in Mr. Nailor, except in his business habits from the time I first knew him. No change in his personal appearance except from age. I only saw him intoxicated once in the last six years." (R., 335–337.)

FREDERICK REH testifies as follows: (R.,, 337 340.)

"I am a paperhanger, box-maker and decorator. I knew Mr. Nailor about 12 years. I did paperhanging for him a long time. The last two jobs were for Miss Conley on 12th street and 14th street. Mr. Nailor came to my house with a carriage and told me to come up. He said: 'I want

some paper in my house, *Miss Kate wants to see you.*' I was up there and she gave me the work. Miss Kate and Mr. Nailor paid me for the work I did on 12th and 14th streets. I was doing the job in the 14th street house about five days. I papered the whole house. *I was there every day*, but I had my men working there. I think I saw Mr. Nailor every day I was papering. *I think I did this work on 14th street the second time in 1876.* I was engaged there about two days. I did not see Mr. Nailor drunk the two times in question. (R., 387, 338.)

"*I think Mr. Nailor was a smart business man.* Some people said Kate Conley was married to Mr. Nailor and some said she was not." (R., 339.)

IRVING W. ARCHER testifies as follows (R., 340):

"I am a carpenter (R., 341). I knew Mr. Nailor for 19 years (R., 341). I did work for him on 14th street, where he resided (R., 341). I put up a front fence there in 1877; Miss Conley paid me for it (R., 343). I worked for nearly a year in the neighborhood on some buildings; three of them were right across the street from Mr. Nailor's house. I saw him very frequently. I would, during that time, see him on an average three times a week. I used to go over there very often at noon and talk with him; he would be sitting on his porch. The principal part of his conversation with me was about building matters. *Not one mechanic in ten could explain some matters about building as well as he. I think his mental condition was all right. I never saw anything wrong about his mental faculties. I considered him extraordinarily shrewd and intelligent. I was buildiag these houses opposite his residence in 1878.* I was working over there when Mr. Nailor moved on 12th street."

(This was after the execution of the last three deeds.)

"The last estimate I made for him was for the 12th street house. *It was in 1878.* He demanded an itemized estimate; *in that case he said he was acting as agent. He gave as a reason for wanting the estimate itemized was that he was acting as agent.* I think Mr. Nailor served an apprenticeship as a carpenter. I think he told me that. He under-

stood my business. He was a practical mechanic. It would be very advantageous to him to have the itemized statement." (R., 341, 342.)

Cross-Examination. (R., 342–345.)

"I have been married seven years. My wife lived at Kate Conley's for a little while, *when she was a small girl.* She stayed there two months or six weeks after Mr. Nailor went to live with Kate Conley. She had visited my wife two or three times. Soon after Mr. Nailor died I called at Kate Conley's sometimes once a week, sometimes once in three weeks. I have talked with her about the property and about the suit. I assorted some papers for her once. She asked me to do it. I think there were some deeds among the papers. *In the spring of 1878* I did not see him walking about much; he generally had a buggy. *Most of the time he rode alone; sometimes he had a little boy with him.* I was not married at the house where Kate Conley was living. I was married at my wife's mother's." (R., 342–345.)

DANIEL MCGUIGAN testified as follows (R., 349-354):

I am a watchman in the car stables. (R., 350.) *For 8 or 10 months I lived in the house with Mr. Nailor.* I knew him in all, five or six years. I saw him frequently. (R., 349.) I used to go to see him after I stopped living with him. *If I had any particular business I generally went to him for advice on it.* His advice always came out all right. We talked about a great many things. *He told me that his own family didn't treat him right.* I never saw anything wrong in his mind during the time I knew him. I have seen him at different times under the influence of liquor. I have seen him coming home under the influence of liquor, *but never at home or going away from home. He was sharp in business.* I saw him about two months before his death. I went out to see him. I talked with him an hour during that visit. (R., 349, 350.)

(Cross-Examination. See R., 350–354.)

JAMES MCLAUGHLIN testifies as follows (R., 360):

I keep a store, and a coal and wood yard. I knew Mr. Nailor four or five years.

I was in the habit of conversing with him on business matters, the state of the times, property, collecting, &c. I last saw him at Burk's store on 13th street. We talked on that occasion on business, renting, collecting, &c. *That was about 1877 or 1878. At that time he was as sensible as any other business man of my acquaintance. I have never seen Mr. Nailor intoxicated.* (R., 360, 361.)

EDGER H. BATES, testifies as follows: (R. 365.) I am an agent for a book concern in New York. *I was a magistrate here for 25 years.* I knew Mr. Nailor for 40 years. I had considerable business with him at times, in "a magistrate way—sometimes getting tenants out for him, sometimes debt cases, &c. He was rather close in his business transactions. *The last case I had for him was about 1876. I considered him all right as far as his mental faculties were concerned. I think he was an extraordinary man. He knew more about business when half drunk than most men do when they are sober.* (R. 366.)

MARX MARX, a clothing merchant, testifies as follows: (R. 371.)

I am in the clothing business, I sold Allison Nailor clothes two or three times a year from 1876. *The last occassion was the winter of 1878.* (In his *cross examination* Mr. Marx fixes this date, (R. 373-374.) He was then in my store. Mr. Nailor was shrewd in his bargaining. (R. 374.) *I think he was fully competent to do business.* (R. 374.)

BENJAMIN J. DARNEILLE testifies as follows: (R., 380, 381.)

I am a practicing attorney and reside in this District, and have resided since 1873. I knew Mr. Nailor tolerably well.

I have seen him repeatedly. He was at our office (Peter & Darneille) *repeatedly on business.* I became acquainted with him several years before his death. My impression is, that for three or four years before his death I knew him, and heard him in business conversation. I never suspected his not being of sound mind. *I think he was always rational* as far as I preceived. So far as I knew or believed, he was capable of business transactions. I never suspected any deficiency or want of ability on his part, to perform such an act as to make a valid conveyance at any time during his life. He may have been in our office in 1875 or the early part of 1876. Before that time he was there repeatedly. He always came there on business—court business. *There was a divorce suit between himself and his wife;* besides that we had some other business for him. I saw him on the street, and possibly some other places. I think he talked both Mr. Peter and myself about his business. (R., 380, 381.)

MARY S. WILSON testifies as follows: (Rec. 291–297.)

I am 58 years old. (Rec., 297.) I lived on E street near 17th thirty years. I owned the house there. *I first became acquainted with Mr. Nailor and Kate Conley in 1871. They were living then on E street in the house next to where I lived. She kept a small grocery store, sold a little of everything. I used to go in there to buy things.* Mr. Nailor used to wait on me sometimes when I went in the store. They moved from there to 14th street. I went to visit them on 14th street to nurse Willie. I stayed then at the house three weeks, going home at nights. I conversed with Mr. Nailor frequently upon different subjects. *He told me several times he had given the house on 14th street to Willie. He appeared to be devotedly attached to the children.* When I have been in the house I have never seen him under the influence of liquor. I have seen him go away from the house perfectly sober and come back apparently in liquor; this was at times. I don't mean every time of course. I have seen him take a little liquor in the house, but not enough to make him drunk. *I think he had a perfectly sound miud. He was certainly very intelligent.* (R., 291–297.)

It thus appears that in July, 1871, Kate was keeping a small grocery store *on E street, near 17th*, where she sold a little of everything—*a general grocery store* (R., 291)—*and here this witness used to go to buy things* (R, 291).

Here, also, the defendant was living and keeping house in the winter of 1870, when Mr. Nailor left his home permanently, and here Mr. Nailor went to live with her, and here they lived together until about 1872, when they moved to 14th street. In this little grocery or variety store Mr. Nailor would sometimes casually wait on one of Kate's customers; and so weak is the complainants' case, that *this fact* is urged by them as proof of his insanity.

While keeping this grocery store, the monstrous crimes urged by the complainants against Kate were committed; *namely, selling liquor without a license, and keeping her place open on Sunday.*

ANN CLARK testifies as follows: (R., 283–289.)

I am nearly 60 years old. I am married. My husband is a stone-mason. We are not separated. I knew Mr. Nailor and Kate Conley for about eight years. I had a sister and she and her husband rented rooms in the house Mr. Nailor lived in, and I used to visit my sister there, and in that way became acquainted with them. My sister and her husband lived in the house with them before they went to 14th street, and was with them sometime when they were on 14th street. My sister and her husband were boarding in the house with them, and afterwards they lived with them on 14th street. I often saw the children when I went to the house. Mr. Nailor acted very kindly towards them, and especially little Willie. (R., 283, 284.) I was there one day and he came in, and Kate pulled his overcoat off and laid it on the baby's carriage, and he said: There's papers in the pocket of that overcoat; you take them out and take care of it. They are all right now, he says to her, but they are to be put on record; and he took some money out of his pocket and said: Here is your change, and gave it to Willie. So she took the papers out and

looked at them, and seemed to be very well pleased, but no one read the papers in my presence; only the words he said is all that I can state; I think one part of the paper was to go to Rockville to go on record, and another part in the City Hall. (R., 285.)

I saw Mr. Nailor on his death bed. I was back and forwards during his last sickness. I was four or five times there. *He was baptised during his last illness. I was present when it was done.* (R., 288.)

We have thus given a summary of the testimony of eleven out of the twenty-two additional witnesses for the defendant whose evidence is *not* stated in our first brief. Can any one read, digest and analyze this evidence, *in conjunction with that stated in our main brief*, without being finally convinced that Mr. Nailor not only had mental competency to make the deeds, but that he was also a man of *uncommon intelligence, ability, skill and judgement from the time the first deed was made continuously up to his death.*

In our main brief we have reviewed the testimony of the first fifteen witnesses for the complainants in the order they appear in the record (Brief, 53–59), and have there shown how ~~lurid~~, weak and flimsy it is. We regret that time and space will not permit us to review their remaining witnesses. But the first fifteen are stronger than the rest. Indeed. the testimony of their own witnesses, if critically examined in the light of all the circumstances, *prove the defendant's case.* They have scarcely a witness outside of the *parties in interest* and some hackmen, hostlers and restaurant men, whose testimony has any weight on the question of *mental competency, and who had opportunities of and occasion for observation and knowledge.* Two of their strong witnesses, on this question, Trundle and McNamara, claim to have been adulterers, and the evidence impeaching their credit is shown on pages 49 and 50 of our brief.

We will now submit the case with the firm assurance that, in this great tribunal, this poor, forsaken and oppressed woman will find the protecting ægis of *justice and law.*

W. D. DAVIDGE,
IRVING WILLIAMSON,
Attorneys for Appellant.

118-127

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THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

CATHARINE CONLEY, *Appellant*,
vs.
RACHEL D. NAILOR, *et al.* } No. 223.

THIRD SUPPLEMENTAL BRIEF FOR APPELLANT, AND ASSIGNMENT OF OBJECTIONS TO THE CERTIORARI RECORD AS EVIDENCE.

I.

After the brief for the appellant had been filed, and on Monday, April 5th, 1886, upon the *ex parte* motion of the appellees, a writ of *certiorari* was issued by this Court, requiring the Court below to send up a record in the case of *Rachel D. Nailor* vs. *Allison Nailor*, No 3,282. The *certiorari record* has just been filed in this Court. It contains only such parts of the proceedings in said Equity cause No. 3,282, as the appellees desire to use.

We object to the admission of this record, and every part of it as evidence for the appellees, and we pray that it will not be admitted at the hearing, or weighed or considered by the Court. This record in Equity cause No. 3,282, and every part of it, is irrelevant and inadmissible as evidence.

It is described in the 12th paragraph of the bill. (R. 4.) The defendant in her answer objects to it on the ground that she was not a party to the suit and is not bound by the *evidence*, orders or decrees therein. (R. 20.) It was *offered* in evidence by the complainants *in bulk*, at page 201 of the record "for all purposes for which the same may be admissible." (R. 201.)

It was, of course, objected to by the defendant at the time it was offered. (R. 201.) But it was never actually put in evidence by the complainants, nor was the original or a copy thereof filed with the Examiner.

It is stipulated by counsel, (R. 24), that "each shall have the right to object to any testimony taken by the opposite party at the hearing, on the ground of the incompetency of the witnesses or the incompetency or inadmissibility of the testimony, to the same extent as if such objections had been spread upon the record at the time of the taking of such testimony." (R. 24.)

We do not know whether any effort was made by the complainants to use this record as evidence at the hearing below. The record is silent on the subject.

We object now, and will object at the hearing, to the admission in evidence of the record in Equity cause 3,282, and to every part of it, on the following grounds:

1. Because it is inadmissible and irrelevant.

2. Because Catharine Conley was not a party to the suit, and ~~had~~ no opportunity to make defense, cross examine the witnesses, or control the proceedings was given her. It is a most obvious principle of justice that no man ought to be bound by proceedings to which he was a stranger.

3. Because the issues in that cause and the issues in the case before the Court are *altogether different*. That was a suit by a wife against her husband for divorce on the ground of adultery and abandonment. *This* is a suit by

the widow and heirs of the husband against a *stranger* to cancel deeds on the ground of fraud and mental incompetency.

4. Because the record was offered *in bulk* without designating what parts were applicable to the case or what parts were to used. It would have been as sensible to offer in evidence the great Bodleian library. It was offered for what it was worth; it is worth nothing except to divert the attention of the Court from the real issues before it. It is simply *res inter alios acta.*

Mr. Greenleaf says: "A party is not to be concluded by a judgment in a prior suit where from the nature or course of the proceedings he could not avail himself of the same means of defense or redress which are open to him in the second suit."

Green. on Ev, Vol. 1, Sect. 524.
1 Stark Ev., 214, 215.

Chief Justice SHAW, in *Burlen* vs. *Shannon*, 3 Gray, 387, 389, very clearly lays down the rule applicable to the case. He says: "Beyond this legal effect of a judgment in a case for divorce—that of determining the *status* of the parties—the law applies as in other judicial proceedings, viz., *that a judgment is not evidence in another suit*, except in cases in which the same parties or their privies are litigating in regard to the *same subject of controversy.*"

The record was admissible simply to show the *fact of a divorce* existing at the time the will and the last three deeds were executed, and we admit that fact to the fullest extent.

We are further willing to admit that the divorce was granted on the grounds of adultry and abandonment. Beyond this the record is clearly inadmissible as evidence for any purpose whatever. Extracts from it should not have been quoted in appellees' brief.

II.

Since our brief was filed we have recceived a copy of the appellees' brief filed in the cause.

We have had no time or opportunity to examine their statement of the evidence *for the appellees* contained therein.

But we have examined and compared what purports to be "*Extracts from the defendant's testimony*," from page 36 to page 52 of their brief, and we deem it our duty to state that *there are irreconcilable, material and vital differences in the statement of the defendants evidence as contained in their brief, and as contained in ours. The differences are contradictory and vital.*

We can only say that we have stated the evidence in our brief *with conscientious and careful accuracy*, and we have referred to the pages of the record in support of our statements. Their statements are erroneous both in omission and commission. We pray the Court to verify our statements by a comparison with the record.

W. D. DAVIDGE,
IRVING WILLIAMSON,
Attorneys for Appellant.

118-127

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Supreme Court of the U. S.

OCTOBER TERM, 1885.

CATHERINE CONLY,
Appellant,

vs.

RACHAEL D. NAILOR, WASHINGTON T. NAILOR, MATTHEW TRIMBLE and LIBBIE TRIMBLE, his wife, JAMES W. CLARKE and FRANCES M. CLARKE, his wife,
Appellees.

No. 223.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

W. A. COOK,
C. C. COLE,
Attorneys for Appellees.

II.

Since our brief was filed we have receeived a copy of the appellees' brief filed in the cause.

We have had no time or opportunity to examine their statement of the evidence *for the appellees* contained therein.

But we have examined and compared what purports to be "*Extracts from the defendant's testimony*," from page 36 to page 52 of their brief, and we deem it our duty to state that *there are irreconcilable, material and vital differences in the statement of the defendants evidence as contained in their brief, and as contained in ours. The differences are contradictory and vital.*

We can only say that we have stated the evidence in our brief *with conscientious and careful accuracy*, and we have referred to the pages of the record in support of our statements. Their statements are erroneous both in omission and commission. We pray the Court to verify our statements by a comparison with the record.

W. D. DAVIDGE,
IRVING WILLIAMSON,
Attorneys for Appellant.

118-127

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Supreme Court of the U. S.

OCTOBER TERM, 1885.

CATHERINE CONLY.
Appellant,

vs.

RACHAEL D. NAILOR, WASHINGTON T. NAILOR, MATTHEW TRIMBLE and LIZZIE TRIMBLE, his wife, JAMES W. CLARKE and FRANCES M. CLARKE, his wife,
Appellees.

No. 223.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

W. A. COOK,
C. C. COLE,
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No. 223.

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Appellees.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

This is a suit in equity brought in the court below by the appellees against the appellant and Allison Nailor, Jr., for the purpose of having declared void certain alleged deeds made by Allison Nailor, Sr., deceased, in his lifetime, to the appellant.

The appellee Rachael is the widow, and the appellees Washington, Lizzie and Frances; and Allison Nailor, Jr., who was a defendant in the court below, are the only children and heirs at law of the said Allison Nailor, Sr., deceased.

Allison Nailor, Jr., declined to become a complainant in the suit, claiming to have received from his father in his lifetime, by way of advancement, all he was entitled to out of his estate, and for this reason he was made a defendant, and answered disclaiming any interest in the property in controversy. (See his answer p. p. 23 & 24)

The said Allison Nailor, Sr., having become demented from the use of intoxicating liquors, permanently abandoned his wife and family in the fall of the year 1870, and lived with the appellant until the time of his death, on the 6th day of Jan'y, 1879. During that period she had four children, of whom, she claims, Nailor, Sr, the alleged grantor, was the father. At times he admmitted that they were his, and at other times denied it. The children all died prior to the time of the death of Nailor, Sr.

The deeds in question, four in number, purport to have been made for a nominal consideration, for the benefit of the defendant and two of these children, and are as follows, viz:

One dated November 27th, 1872, purporting to convey to appellant in trust for Willie Earnest Nailor, part of lot 26 in square No. 231 in Washington, and providing that when the said Willie should arrive at the age of 21 years the trust should cease, and he become seized in fee simple; or in case he should die before arriving at that age, the title to absolutely vest in appellant. This deed was recorded on the 27th day of May, 1873.

The other three deeds are each dated the 29th day of March. 1878, and the first of them purports to convey to defendant lot 11 in square 258, except a portion of it sold to J. P. Miller; lot 12 in square 258, except the portion of it sold to Sarah Huntress; also parts of lots 2 and 20 in square 293, in trust for the child called Mary Edna Nailor, until she should become 18 years of age, then she to become the absolute owner, or if she died before attaining that age, then the defendant to take in fee simple. This deed was recorded on the 2d day of April, 1878.

The next deed purports to convey to appellant with the same trust and condition as the deed of the 27th of November, 1872, two tracts of land in Montgomery county, Maryland, one containing 100 acres, and the other 30.

The other deed is made to the appellant for her benefit, and purports to convey a farm of 112 acres in Montgomery county, Md. The two last mentioned deeds were recorded in that county on the 5th day of April, 1878. (See deeds pp. 8-15.)

The property mentioned in the deed of Nov. 1872, is worth $3,000; that in deed of March 29th, situated in Washington, $11,000, and that in the other two deeds situated in Maryland $10,000. (See pp. 56-7.)

The grounds upon which the appellees assailed, and the court below annulled the alleged deeds were:

1st. Incompetency of the grantor,
2d. Imposition fraud and undue influence on the part of the Appellant.

The bill of complaint is on pages 1 to 6 inclusive of the record; the answer on pages 17 to 21 inclusive, and

the general replication on page 22. There is an amendment to the bill on page 23. The decree of the Special Term of the court below annulling the deeds is on page 25 ,and the decree of the General Term affirming it, on page 27.

The General Facts.

Allison Nailor, Sr., was a man of ardent temperament, strong appetite and passions. In his early and middle life he was a very active business man, engaged in farming, keeping livery stable, running coaches in Washington, buying and selling property of various kinds, and up to 1861 or 1862 he had accumulated a considerable fortune, worth probably upwards of $125,000, consisting of real estate in Montgomery County, Maryland, and in Washington, and various kinds of personal property. He was married in 1835 to the appellee Rachel D., and they lived together happily many years in Montgomery County, and afterwards in Washington. The four children, parties to the suit, are the issue of the marriage. During his earlier life he occasionally drank to excess, but did not perceptibly injure himself or his estate thereby until about the year 1861 or 1862, when his indulgences became more frequent and were carried to greater extent than before, his debauches sometimes lasted weeks at a time, and he soon abandoned his business and ceased to give any considerable attention to the care and preservation of his property, but seemed to give himself up entirely to his appetite and passions. He owned a number of houses in the section of the city of Washington known as "Hooker's Division," which were mostly rented by disreputable parties from 1862 until 1870, and during this time, when under the influence of liquor, and on what

is termed "sprees" he would visit these houses and remain for days at a time, until his wife and family would find and take him home. They used all means known to kindness to wean him from his appetite and restore his former habits, but to no purpose. His fits of drinking and debauchery became more and more freqnent from year to year, and about the years 1869 and 1970 he was scarcely ever sober, and had become much enfeebled in body and to a considerable extent weakened in mind. About this time he met the appellant, who, though then young, was lewd and abandoned, and he seemed to become infatuated with her She plied him with liquor encouraged his sexual indulgence with her, and they soon commenced to live together, in open adultry, he leaving his wife and family, and a home of comparative luxury to live with her in almost abject proverty. Many times the wife and children tried to reclaim him by the natural influence of affection, but by force or artifice the appellant eluded their efforts, and the unnatural influence prevailed. When he commenced living with the appellant he totally abandoned his family and home in the fall of 1870, never returning to it again, or meeting or speaking to his wife, and holding very little intercourse with his children.

After that time his habits became worse, and he was almost continually intoxicated, and a greater part of the time very much so. The appellant incouraged his drinking and kept him constantly plied with liquor. His drinking and other excesses affected his health to a consider. able extent, so that about the time and after he left home, his physical constitution was very much shattered, and he was infirm, weak and sickly most of the time. The same causes also affected and weakened his mind

and will, and he became greatly changed in his condition and appearance, and from about the time he left home he was incompetent to transact business or manage his estates, and in fact did not do so.

Appellant took possession of, and exercised a complete dominion over him during his life, and even after his death refused to yield his body to his wife and children for burial, until compelled by law. While living with him, she associated with other men, and the children she had during that time are more likely to have been begotten by others than by him, but she, at times, succeeded in compelling him to acknowledge them as his.

While he was thus feeble in body and demented, without will-power to control his own movements and thoughts, and while he was under the absolute control and dominion of the defendant, by her procurement and connivance, and fraud, and that of her friends and agents, he was induced to make the deeds in question.

In 1873 the complainant, Rachel, then his wife, instituted a suit for divorce *a mensa et thoro* and alimony, which were granted The proceedings in that case, Equity, No. 3,282, in the court below offered in evidence, and hereafter referred to, afford a striking illustration of his demented condition, and the absolute control of the defendant over him.

Synopsis of the Evidence.

(The numerals refer to the pages of the printed record.)

COMPLAINANT'S TESTIMONY.

The testimony showing incompetency and undue influence is so interwoven that it is found impracticable to separate and arrange it under different heads. That

which seems to bear more especially upon undue influence is printed in italics.

WASHINGTON T. NAILOR: (49)

Am a son of A. Nailor, Sr.; (49) father died January 6th, 1879; he was residing at 306 12th St. N. W. with defendant when he died; had been living with her continuously since fall of 1870, at different houses in Washington; mother lived during same time at home, 612 13th St. N. W., have known defendant since 1869; first saw her with father in one of his houses on 12th St. about one year before he left home; he became acquainted with defendant sometime before he left home; don't know exactly when or where; the last time he was at home I went after him and brought him home when he was on a spree; he got very abusive to mother and me, and presisted in going out again and started out several times; I went after him and brought him back, and each time mother begged and tried to make him stay, but he finally left despite our efforts, and never again returned to the house alive (50); when I went after him on this occasion I found him in a house on 17th St. with defendant; it was 10 or 11 o'clock at night; I passed the house earlier in the evening and saw two females standing on the opposite side of the street watching the house; it was raining; after going home and finding mother absent I went back to the house and found her and her servant woman standing in the rain watching the house; sent them home, and then went into the house for father; *defendant objected and tried to prevent me from taking father away, and to keep me out of the room; I broke the door down to get in, she gave me some abusive lanyuage about my mother:* it was a bed-room, and both were undressed; I took father home he was then intoxicated (51); during the last year or two of his remain-

ing at home I went for him and took him home a great many times; always found him intoxicated, and in the lowest places; on another occasion I went for him when he was with defendant on E St. near the observatory; *she denied that he was there, but afterwards acknowledged to me that he was and she would not let him come; said I could not get in, as she had a big dog there, which I heard barking*: I got him and went home; there were a great many other occasions when I found him with defendant before he left home permanently and about the time he left (52). He drank more or less ever since I can remember, and towards the last of his remaining at home he would go on sprees that would last two or three weeks at a time; would be drunk all the time he was on these sprees; would not stay away from home unless he was drinking; during the last two years he remained at home these sprees increased in frequency and duration, and he got to drinking harder and harder; his health kept getting worse on account of his drinking, and his mind became impaired; he did no business while on these sprees. Mail-contracting, keeping livery stables, and farming were his main occupations; there was not a shrewder business man than he up to 1862; since that time he has done no business, and squandered a good deal of his property up to the time he went away from home (53;) he would not keep his property in repair or pay taxes on it; since 1862 he has done no business; mother's treatment of father was as good as any wife's could be; I have known mother to go after him hundreds of times, to drinking houses, and houses of prostitution and take him home, both while he was living in the country and while he lived in Washington; I have been after him hundreds of times before he left home to live with defendant, and

taken him home, and since he has been living with her have often talked with him and tried to induce him to leave her, and have offered to pay defendant any reasonable sum if she would leave him or make him leave her. He lived in Montgomery county from 1854 to about 1862 (54;) he transacted business in Washington while he lived in Montgomery county; the frequency and intensity of his drinking increased after he left home: he did no business after that time; Jas. W. Clarke, his son-in-law, attended to his business awhile, then I did, then Allison Nailor, Jr.; I quit attending to his business because he would not let me give mother anything out of the money I collected for him; he spent his time continually with this woman (55). In the latter part of March, 1878, father's health was in a very bad way—in very bad health; his mind was very much impaired; he was old, feeble and childish; on the 29th day of March, 1878, he was not competent to transact business or make the deeds mentioned in the bill; I do not think he had been competent for the last 8 or 10 years of his life, do not think he was competent on the 27th day of Nov., 1872; the defendant had influence enough over him to induce him to leave a good home, wife and children, and live with her and support her; I have seen him in court with her—the Police Court and Criminal Court when she was prosecuted for selling liquor without a license; he sat by her in court and paid her fine; father was 71 when he died.

Father was 71 when he died; the funeral took place from mother's house, No. 612 13th St., N. W.; his body was removed to her house the same night he died. (57)

While I was collecting his rents I gave him as little money as I could put him off with, as I knew the defendant got all I paid over to him. (39)

At one time he cried like a child and told me he knew that he had been doing wrong and would try and get away from this woman and live a different life; also said he did not believe they were his children and that he had made a mistake in making the deeds to them; there were several conversations of this kind; they took place during the fall of 1878, a few months before his death; he gave me to understand that he wanted to leave her but she would not let him; *I know she was continually running after him.* (61)

JAMES W. CLARKE. (37.)

I am one of the complainants; I resided in Washington from Aug., 1862, to Dec., 1866, and from April, 1867, to May, 1868, and from Dec., 1869, to May, 1873; I married the daughter of Allison Nailor, Sr.; I was acquainted with him from the winter of 1864 until his death; had the management of his estate and business, except the portion occupied by his sons, from spring of 1870 until late in the fall of 1872; I did this at his request; he gave me the entire control of his property; he was growing old and had become so much a slave to intoxication as to have lost interest in business, and so habitually incapacitated for its transaction by frequent intoxication that in the intervals of sobriety he believed it was necessary to have his property under other control than his own, for protection against his own acts when drunk, and in one of these intervals appointed me manager of his property; he apprehended that advantge would be taken of his condition when under the influence of liquor; (38) he was generally thoroughly incapacitated, because of continuous intoxication; after leaving home his debauches were nearly continuous, and the intervals of sobriety were exceedingly rare, and in those intervals he was completely pros-

trated as a consequence of his drinking, and was thoroughly childish, and manifested great aversion to any kind of business; when I first knew him he was addicted to occasional sprees—a good business man, and health good; there was a decided change in his mental and physical condition while I knew him; in 1867 and 1868 I saw considerable of him; he had then changed greatly for the worse since I first knew him; did not again see him until Dec., 1869, when his condition was what I have described; his mental powers where then so much impaired that he would have given me any or all of his property without apparent appreciation that he was depriving himself or doing an injustice to his family; his condition had changed from the time of my first acquaintance with him, from a capable man of business, by degrees, into the complete slave of appetite, having neither will, complete memory, or the power of concentrated attention on any subject; he seemed to forget matters of grave moment and would not remember the engagements of the previous day; from 1870 to 1873, when I left Washington, I should at no time have been surprised to hear of his death; during the time I had charge of his property I lived in the house with his family and where he lived before he left home; had opportunities of seeing him daily; his debauches became more and more frequent while at home and he always remained away, and finally quit home entirely and went to live with defendant (39); I saw him occasionally after he left home, but less frequently the last year I had charge of his business; had difficulty to obtain interviews with him on business, and on nearly every occasion I succeeded in gaining any access to him found it impossible to arouse him to any interest in his business or to procure from him any, even the most general direction; never met

him that he did not speak of his sufferings; every indication of his features was the last stages of alcholism; his face was swollen, bloated and blue; he was excessively tremulous, and his manner of speaking, and the fact that he could not fix his attention on any matter, indicated to me that his mind was seriously impaired; his conversations were many times senseless, showing flightly and unsettled state of mind; abrupt changes from subjects without any chain of connected ideas; he would forget from moment to moment what he had been saying; during the earlier period of my connection with him he was sometimes sober, and appeared rational; on some occasions, after he left home, when sober, he would manifest a desire to sever his connections with defendant and her set, but would relapse before anything could be done; during the last year of my connection with his business, except on two occasions that I obtained access to him, I found him confined to bed; on those two occasions (when not in bed) I found him in a little store kept by defendant, retailing articles from a stock, the whole value of which was not more than $100. taking a childish interest in the sales; found it impossible to obtain his attention to business of his own, in regard to which I was visiting him, and involving large interests; (40) do not think he was compent to understandingly transact business, or make deeds in fall of 1872, though he would have been if separated from the influences under which he was held and given time for the restoration of his faculties, with proper treatment and abstinence from intoxicating liquors; as it was, he was not competent; I know the defendant; have seen Nailor with her; before he left home he would be absent days at a time, and when found would be in a house with her; *by his direction, on January 26th, 1872, I paid $79 fine*

and costs in causes No. 9,160 and 9,161, Criminal Court of the District of Columbia, and other sums; she came to me once, soon after Nailor went to live with her, and demanded money for a team of mules she said she had working for the Board of Public Works; I told I did not know of her having any such team; that I had a pair working that had been given me by Nailor; she made some threats and left; she brought me an order from him for money or provisions; she came to me on another occasion with an order for money, the body of it written in a strange hand and the signature, though in the handwriting of Nailor, indicating so much discomposure, that I refused to pay it, and it was not again presented; received others of similar character by her errand boy, which I treated in like manner; saw them together three times, I think; she seemed to have great influence over him; he seemed to be afraid to say anything to me in her presence; the fact that he remained with her, and when absent from her and sober expressed a desire to leave her and return to his family, and when remonstrated with for living with her, would turn and walk away, that he had an elegant home, with every luxury and comfort, and would remain with her, abandoning his business, family and property, assisting her in a little store in a mean house—the difficulty of approaching him at her house and other circumstances I have already mentioned—many incidents I cannot now recall, are the facts upon which I base my opinion, that she completely dominated his will; I have attempted to see him at her house fully 30 times and never succeeded more than a half dozen times, and some of these when she was absent; she sometimes told me he was not there, and I afterwards discovered he was in the house at the time, and when she acknowledged his presence she would go to see him and return and report that he refused to see me; on one of these occasions I insisted upon seeing him because of a cause coming up in court; it was necessary he should be personally present at the trial; I

found him in bed, intoxicated; he would not attend the trial of of a case against his wife, though his presence was urgently required, but did go to court with the defendant when she was tried for scandalous offences and settled her fines, and reproached me for paying the judgments against his wife for $100, out of his money; April, 1872, Nailor, at his own suggestion, bought a pair of mules for me; I employed them in hauling for the Board of Public Works; he told me to give the proceeds to my wife; I had them at work about 2 months when defendant made the demand I have stated; he never spoke to me on the subject afterwards, but my driver, soon after, reported that they had been taken by him and defendant, and I afterwards saw them working for different contractors as her mules; (42) *when I told him about her claiming to have rented the house and was having a family move in, and that I had stopped her, he seemed annoyed and said I better let her have it, but I did not; have paid money on many orders from Nailor, brought to me by a boy in her employ.* (42)

CROSS-EXAMINATION.

I never could get him to examine my accounts and settle with me; I have paid over and accounted for all I ever collected; I had absolute control of his property and business (44). His manner was timid and apprehensive in her presence; her's was self-asserting, positive; and defiant.

WM. B. REED, (103.)

Reside in Washington; knew Nailor intimately for 25 years; I knew him very well; visited at his house very frequently; have staid at his house two or three weeks at a time prior to 1865; since that time met him frequently until he left his home; I have seen him since on the street and spoke to him about a grocery bill I had against him; I called at his house afterwards about it and was

told by his wife I would have to see him; in 1870, I found out where he was and called to see him about the bill, where he was then living with defendant on E, between 17th and 18th; *I called there several times, and once or twice after he had just gone into the house, and defendant told me he did not live there, she always told me he was not there and did not live there;* one day I saw him standing back in the house; he was in his bare feet; he was waiting on a little child in the store when I went in; I spoke to him, at first he did not seem to recognize me, he asked me what my business was, I told him I called for the settlement of a little account I had against him; he asked me what it was for; I told him for groceries for his home on 13th street: he declined to pay and said he had nothing to do with his property at that time; this was April, 1870; I called on him probably fifteen or twenty times within the next year or so; on several occasions his appearance was extremely repulsive and disgusting; *once or twice the woman came in and asked me what my business was there; on one occasion she was smoothing his forehead in the back room, and she shut the door and left me in the front room or store, she said he was sick and could not be seen;* the first time I saw him there his pants were open in front, with no suspenders on, his face was disfigured, I judge from liquor, and I scarcely recognized him at first (104) it was the first time I ever saw a person of respectability in such a condition, and was greatly surprised and it made a great impression on me; would not have been more surprised if I had seen him in his coffin; it had been a month or more since I had seen him; I recognized him only by his nose and upper portion of his face; there was a month or six weeks growth of beard on his face, he was bloated and his face red; shirt was open and exposed his breast; I sued him on the account and he made

no defence; and the money was afterwards paid to me by his agent, Clarke; he was intoxicated on each occasion when I saw him· he asked me to drink: I saw him occasionally afterwards and heard him talk, seemed to be in a stupor, whether from liquor I do not know, (105) the last time I saw him was a month, or six weeks before his death; in my opinion on each occasion I saw Nailor after he left home he was not competent to make deeds or do any business; I would not have bought from him; I advised his family to have him sent to an insane asylum; I would have sworn then that I believed him insane; do not think he was competent in Spring of 1878, to do business or make deeds: saw him frequently that Spring very much under the influence of liquor. (106.)

CROSS-EXAMINATION.

Mrs. Nailor and her family deal with me, I am friendly with them. (106.)

MATTHEW TRIMBLE: (62)

Husband of Rachel E., one of complainants, the eldest daughter of Allison Nailor, Sr., became acquainted with him in 1865, was married Nov. 22, 1869; prior to that saw little of him; saw him almost daily during the year 1870; after he left home I saw him only occasionally; think he left home permanently in latter part of 1870; in latter part of that year, I went, at request of Mrs. Nailor, and found him in a saloon, drinking, he finally consented to go home; *said he had an engagement that evening: I asked him who with, he said it was with the one that caused all the difficulties, and he did not believe he would ever be able to get rid of her*; he remained at home about three weeks, (62;) about that time he invited me to go out to Rockville with him, we drove out, on the way he

stopped at a grocery and left me in the buggy; was away from me about an hour, and when he returned to the carriage was very much intoxicated; the residue of the journey he devoted to urging me to accept the agency of his property, offered to turn it over to me to do as I pleased with it; when we returned that night he refused to go to his home; the next I heard of him he had gone down the river with Wroe and others; since that time I have seen him only occasionally: after I came to know him he was frequently intoxicated and away from home, and his wife and Washington would go after him, I lived in his family for some ten months after I was married and afterwards in the house adjoining; his treatment from his wife and children was very considerate, much more so than I supposed was possible under such circumstances; they frequently went after him when away and intoxicated, to bring him home, and used all inducements possible for him to remain. (63)

I never saw defendant but once; that was at the house on 12th street, where Mr. Nailor died, and on the day of his death; went there with Deputy Marshal Williams and others for the purpose of having the body removed; we remained about 15 minutes and then took the body to 612 13th street, his residence; *while we were at 306 12th street in the room where the body was, the defendant was there and became very excited, and objected to the removal of the body until she could show the papers the Marshal produced to Mr. Carrington, her lawyer; she persisted in denying us the right to leave, until some men to us unknown interfered and persuaded her, (64;) in my conversation with Mr. Nailor, about the defendant he said he knew he had the best wife God ever gave to any man, but that he was now under the influence of another woman from whom he could not escape; this was in*

the fall of 1870; I only saw him a few times after he left home; every time I saw him he was intoxicated; he had become very much demented and almost childish in his manners before leaving home: from what I saw of him in 1876, 7-8, I would be unwilling to invest any money upon deeds made by him; I do not believe he was competent to transact any business of that kind; he seemed to have no business after I knew him; he was idle and accumulated no property after I knew him. (65)

EVERETTE WROE: (142)

Have resided in Washington over 50 years; knew Nailor all my life, until his death; knew him intimately; when I first knew him he was a thorough, practical business man, he was then steady; (142) the last years of his life he was very dissipated; there was a very great change in him toward the latter part of his life; I never thought he was able to do any business or do anything after this change; this change began to show itself plainly in about 1870; I first noticed it when he came to purchase my farm in Leonardtown; I noticed it by his general deportment: we negotiated about the farm, talked considerable, but he did not buy; I talked with him frequently from that time until his death; saw him as often as two or three times a week in 1878; from the time he came up on the boat from my place in 1870, I thought he was demented, not in his right mind; he was always so, on until the time of his death; he always looked blue, he appeared as though he had been drinking all the time; he was not Allison Nailor in 1878, he had changed so much; his appearance had changed completely; he could not talk on any business transaction whatever, and the impression he made on me was that he was losing his mind; he was not competent in March, 1878, to make

deeds or dispose of his property and comprehend the nature and effect of the transaction; he was so incompetent, in my opinion, eight or nine years the last of his life, (143) when he came up from my farm in 1870, there was a hackman that wanted to take him in his hack; I objected and told him I had a conveyance for him; I took him in with me and drove up to what is called the Republican Building, on 13th street; he then requested me to stop and let him out, saying that he was going to the stables; I told him it was a late hour at night and he must go home to his wife; he said he would not go there but was going on 17th street and did not want me to go with him; Mrs. Nailor called on me next morning to know what had become of Mr. Nailor; I told her; at her request I went to the house on 17th street and inquired *of a woman if Mr. Nailor was there, and she said no and would not admit me; she was a rough looking woman, but I did not know her name, house was on 17th between D and E streets, N. W. do not think there was a better man than Nailor, up to the last 10 or 12 years of his life, when he went to live with this woman; 3 or 4 times after this at the request of Mrs. Nailor, I went to the same house to try to get him to go home; I always saw this woman, but never could reach Mr. Nailor, she always said he was not there: I talked with him about going back home afterwards a dozen times; he said he had his objections; I could not get him to tell his reasons.* (*144.*)

SAMUEL C. WROE: (146)

Live in Fairfax county, Va.; was born in Washington and lived there about 50 years; went to Fairfax about 2 years ago; knew Nailor ever since I can remember; was a builder when in Washington; knew Nailor very intimately and talked with him frequently down to the time of his death; there was a great change in him dur-

ing his life; I noticed the change about the time he took up with the defendant; he did not seem to know anything; he was drinking all the time; he took his wife's carriage to take this woman (defendant) to market; his wife would have to walk; I have often tried to get him to leave defendant and go home to his wife, but he refused and said his wife would not receive him; his wife asked me to go and get him to come home, (146) I found him and got him part of the way home and he refused to go further; I told him his wife said she would receive and take care of him; *I went to see Nailor while he was living with defendant on 10th between Pa. Ave. and C street; saw a woman: she said Mr. Nailor was up in bed and could not be seen*; am brother of Everette Wroe, who has testified; was present when Nailor went to look at his farm in 1870; he was drunk; he was drinking all the time after that, and was drunk every time I saw him; he was not the same man after that; *heard him say that defendant was the cause of all his trouble, and he cried like a child, and said to me, "Sammy take me home for God's sake."* There was a very great change in his personal appearance towards the last of his life. he looked like a dissipated, bloated man; his face had a blueish cast produced by liquor; in early years he took an occasional spree; in after years he seemed to live under the influence of liquor, and his mind was also greatly changed; he seemed to have lost all power of conversation and became a perfect inebriate; do not think he was competent to do business or understandingly dispose of his estate since 1870. (147)

JOHN H. CLARKE: (66)

Have resided in Washington 17 years; knew Nailor since 1862 or '63, and down to the time of his death, quite intimately, seeing him every few days; he drank a

great deal most of the time; have seen him intoxicated often; for the first 8 or 10 years I knew him he was under the influence of liquor most of the time; the last 6 or 7 years of his life he sort of got stupid like; and he could not drink as much as he used to; that it had got the better of him; have seen him intoxicated frequently during the last 6 or 7 years of his life; nearly every time I saw him he was intoxicated, until the last two years of his life, and in those years I saw him intoxicated frequently; when I saw him intoxicated he was considerably so, sometimes he could walk, and sometimes he had to be helped: conversed with him towards the last of his life; considerable the last 6 or 7 months of his life (67); saw him and defendant together frequently; I think his health and mind have been failing for the last 8 or 9 years; he lived in a filthy, unhealthy place, part of that time; he kept a little rum shop and sold to negroes; a negro man owned the house, and defendant waited upon the customers; never knew him to do any business after I knew him; I knew him well in 1872, and in the Spring of 1878. saw and talked with him every few days; he was growing feeble; I used to talk with him about it; his mind was flighty like; he would commence talking on a subject, and in a few minutes forget what he was talking about and go on to something else; he would talk of his former business, and say he was now too old for business; in my opinion in March 1878 he was not competent to convey real estate; has not been competent to do any business to the amount of $200 for the last 4 or 5 years of his life (68); do not think he was competent to do any business in 1872; his mind was wandering and he was very forgetful (69).

CROSS-EXAMINATION:

Am a tailor; when I first knew him I saw more of him; and saw him intoxicated oftener in 1864 than towards the last of his life; when I first knew him he lived at home; afterwards with the Conley woman; he left a good home and went to live with her in a hole (69).

CHARLES F. M. BRUCE: (71)

Knew Mr. Nailor for 35 or 40 years; lived in the house with him 10 or 12 years; this was before the recent war; (71) knew him intimately afterwards Would see him every few days. Sometimes it would be a week—perhaps a month. *Saw the defendant once in a house at the corner of* 13½ *and E streets, N. W. Went there to get Mr. Nailor at the request of his wife. Found him in bed, and defendant in the same room with him. No one else was there. He was intoxicated.* I was not living at his house at that time. His wife used to come after me to go after him. (72) I have often gone after him at her request. The occasion above mentioned was before he left home. I saw him with defendant frequently before he left home permanently. Saw him frequently after he left home. When I first knew him he was a temperate man (79), he got to drinking badly afterwards. Cannot tell when he commenced. It increased on him. Was worse towards last of his life. He was intoxicated nearly every time I saw him after he left home permanently. Have been at the house where he and defendant lived together dozens of times. Shortly before he died he talked with me about living with her (80). He came to see me very feeble. I helped him across the street. Asked him why he didn't go home. *He said he intended to stop the life he was living, and go to his home.* [*Said he did not believe the defendant's*

children were his.] That he was tired of that way of living. Talked with him frequently the last few years of his life (73). After he left home his health was feeble all the time. He drank so much it kept him feeble. I do not think he had any mind. He was not competent to make deeds in March, 1878. When I would go where he was living with defendant, she would be in the whiskey shop in front, and he in the back room lying upon a lounge. *He did no business after he went to live with her. He was in the house with her nearly all the time* (74).

CROSS-EXAMINATION.

Am a hackman, and have been in the business since I was 13 (74). Mr. and Mrs. Nailor seemed to be a happy couple when I lived at his house. I went after him many a time after he commenced drinking and finally gave him up [75].

RE-DIRECT.

I have been with Wash Nailor several times when he took his father away from the house corner 13½ and D streets. Saw defendant there then. Mr. and Mrs. Nailor always seemed to live happily together as long as he remained at home [77].

JACOB POSS [78].

Have lived at Rockvile. Lived on Nailor's farm in Montgomery county 5 years [78]. Knew Nailor in his lifetime, and his wife for 20 years. Saw him very frequently, often once a day. It would sometimes be a month, but that was not often. For the last 6 or 7 years of his life, he was drunk nine-tenths of his time. He drank more towards the last of his life than in former years. When I first knew him he was a sober business man. He was then farming and dealing in stock to a certain extent. Towards the last of his life he was not engaged in any business. He let his farm all go to rack.

His stock was neglected and died off. The Spring I took the farm he had plenty of feed and a great deal of stock there, and still he would let his stock die for want of attention and care. His farming implements and machinery just laid and rotted. He commenced to neglect his business ten years ago, and kept getting worse *Have seen him in presence of defendant at the house they occupied in Washington* (100), *where she kept a little shop* (79). I sometimes took vegetables when I was on the farm. He frequently told me not to take any vegetables from the farm to his wife or give her any money. Before he went to live with defendant I used to furnish Mrs. Nailor with produce from the farm, and after he went to live with defendant and forbid me to let his wife have more, I continued to take her vegetables; when I saw Nailor at the house with defendant, he was generally intoxicated and sometimes very drunk, and he would say he was sick; when I first knew him he was a strong hearty business man; the last 5 or 6 years of his life he was very much broken down from drinking; if he was not under the influence of liquor all the time he was sick from its effects; this effected his mind; he was stupefied [80]. I saw him in Rockville in March or April, 1878; he said he had come to transfer his property; that he would not leave it to some members of his family to dispose of; I have forgottn whom he mentioned; the defendant and a little boy were with him; I did not get very close to him, but he appeared to be very weak or very drunk; I do not think he was competent or in a condition, mentally or physically, to understandingly dispose of property at that time, or in the spring of 1878 I do not think he was competent in the fall of 1872 saw Mr. and Mrs. Nailor together while they were living together; she was very kind to

him, even when he was intoxicated; she has frequently come for me to go for him, and I have done so and found him intoxicated and taken him home, I took him out in the country once and kept him over a week to try and get him sober (81).

CROSS EXAMINATION (394).

I rented his farm for some time, and the last year of his life he came out and ordered me off his farm, and threatened to shoot me; he seemed to be in a crazy spell; there was no provocation; he swore I was robbing him after having over-paid him in his rent; he swore I had sold his stock; he had starved it before I got there; some died and some I bought of him; some were just able to stand; some I sold for him and gave him the money; he wanted the cattle and took away one cow when I was absent—one he had never seen—mine; *took it and gave it to defendant*; I tried to get the cow back but never succeeded (395).

THOS. E. FRANCE (82).

I reside in Washington; am with Washington Nailor at his livery stables; knew Allison Nailor Sr., in his life time about 25 years; knew him very intimately during most of that time, especially towards the last of his life; he always drank some; towards the last of his life he became worse and drank more; the last 7 or 8 years he was nearly all the time under the influence of liquor (82); he would sometimes drink until he was dead drunk; his habits became worse after he went to live with defendant; got drunk more frequently and had less self-respect, he did no business after he went to live with defendant; he spent of his time generally in getting drunk and laying around in the lowest places; during the last 8 years of his life I conversed with him every day or so; in March

1878 he was not competent to make deeds of real estate—most decidedly he was not; he was not competent to transact business for 6 or 7 years before he died (83); *have seen him frequently with defendant in the street; I was present when he was dying; there were also present at that time the defendant and two woman; was at the house after he died; I tried to get def't to let his body go home; she declined; said she said she had had him baptized in the Catholic church.*

PARK D. MILLS: (92)

Reside in Washington; am a boatman by occupation; have been clerk on a steamboat, (92;) knew Nailor for about 3 years before he died; during that time saw him as often as every other day on an average; became intoxicated sometimes; he was more or less under the influence of liquor all the time, and used to travel around in a phæton, and had to be helped in and out of it; I never saw him when he was not under the influence of liquor; he was in very feeble health all the time I knew him (93;) his mind appeared to be weak; he would wander from one subject to another; do not think he was competent to make conveyances or transact important business while I knew him (94.)

JAMES DONALDSON: (120)

Have resided in Washington for 53 years; am crier of Criminal Court of the District; have been for 8 or 9 years; knew Nailor for 40 years; I took two affidavits of men for him at once. when I was a justice; I sued him for Wall in 1873; I had more to say to him then than I had before for the last 15 years; he came in response to a summons; he went on crying and hallowing and raised an excitement and crowd of people; (120) he shed tears, cried like a baby; he appeared to think he was persecuted;

that everybody was robbing him; it was then a good while before I could get rid of him; I dismissed the suit; did not try the case and dismiss it on the merits, but because he went on so, he was not sworn; I got disgusted and dismissed the suit; a long time had intervened since I saw him; he appeared, when at my office, to be in poor health; he seemed to be a wreck of his former self years ago when I knew him; he was then a very shrewd business man; that was 30 years ago; I was intimate with him then; I can say that at the time he was at my office in 1873, his actions and ways impressed me that his mind was pretty well gone, from what it was when I knew him in former days; in latter years I have seen very little of him. (121)

LEWIS M. GRAVES: (124)

Have resided in Washington and Georgetown 19 years; knew Nailor for several years; knew him 12 years ago; knew him very well up to 1874; in that year Geo. W. Phillips who was the sequestrator of the Court in the divorce suit, then appointed me his deputy and from that time until 1877 I had charge of his property and collected his rents; I saw him often during that time; (124), he was in very bad condition; whenever I met him he was very much under the influence of liquor; he was very abusive to me and used very harsh language about both Phillips and myself, and seemed to think we were trying to rob him, and threatened to put us in the penitentiary; he always seemed to be crazed by liquor or something else; he talked like a drunken man, as if he did not know what he was talking about; do not think he was competent to make conveyances or transact business at any time when I saw him; I saw very little of him after I ceased to be deputy sequestrator; (125) on one occasion heard him say that his son Allison would be glad to see Kate Conley

dead; *that she was the only one that ever took any care of him, and that he intended to take care of her in spite of his sons;* when I first knew him he seemed to be kind and gentlemanly; after I took charge of his estate he was just the reverse and always drunk. (126.)

NOTLEY NAILOR. (129.)

Have resided in Washington all my life; am 30 years old; knew Nailor all my life; he was my uncle; knew him intimately both before and after he left his home, he was greatly addicted to drink; after he left home did not see him so often; he was always intoxicated when I saw him; after he left home he would come to my place of business: sometimes when I would see him coming I would hide because he was drunk and would talk about family matters; he would abuse and curse first one member of the family and then another; saw him riding with defendant; towards the last of his life he was not the man he used to be in former years; he had failed very much and appeared childish; do not think he was competent to make deeds or transact business in fall of 1872 or spring of 1878 (130.)

EDWARD CRUSOR. (132.)

Have resided in Washington 50 years; am a real estate agent; knew Nailor 25 years last of his life almost as well as any of my own family; did business with him; about six months before his death I talked with him about his then condition, and comparing that with my early acquaintance with him, and I talked freely with him about his way of living; I reproved him; he then said it was very rarely that he ever drew a sober breath; I charged him with having left his home and being the father of illegitimate children; he denied

having children by any other woman than his lawful wife; during the last year of his life I saw him nearly every week; he always seemed to be under the influence of liquor; he told me he was unable, by reason of his course of living, to attend to business; this was about 6 months before his death; he certainly looked wretched; he seemed to be stupid, and flatly refused to talk about the future (132;) he admitted he was incompetent to transact business, and denied again and again that he had any children except by his lawful wife. From the way he acted I judge he did not know, one half the time what he was doing or what he was talking about. My opinion is that he was incompetent in spring of 1878, to make deeds or do business. (133.)

WILLIAM E. DARCY. (134.)

I reside in Montgomery county, Md.: am a farmer; I have resided in said county 25 years, and knew Nailor the last 25 years of his life, and the last 15 knew him very well; rented a place from him in 1859; since that have known him well; the last 5 years of his life saw him very frequently; he went out to his farm often and always called to see me; he asked me to keep an eye on his farm; when I first knew him he would get intoxicated occasionally; in later years after he removed into the city, he was nearly always under the influence of liquor; never saw him sober but once (263); *he frequently took the defendant out to the farm with him; he was always drunk on these occasions*; I have often helped him into his buggy on those occasions (264); he wanted me to board him; *said he thought his family was down on him and he would live longer if he went to the country; his mind seemed to be bothered about his family difficulties* (134); his mind was in bad condition; he could not remember

what he was doing; have many a time seen him break off a weed or straw out on the farm and try to strike a light with it to light his pipe with: he could not remember anything much, I have told him about people taking wood off the farm, and the next time he would come out he would ask me if any one was committing any depredations; he often said he desired to go home but received no encouragement; and then he would cry; during the last ten years of his life he was greatly changed from what he was when I first knew him; *saw him in spring of 1878, coming from farm with defendant and one or two children; he was drunk then; do not remember the exact date; I did not talk with him except he told me he had been to Rockville; he was not competent on that day to transact any business;* do not think he was competent to do business or make deeds, or dispose of his property in spring of 1878; think he was incompetent in fall of 1872; a day or two after I saw him coming from Rockville; (135.) I saw him again and he told me he had been to Rockville on that former occasion to transfer a little property. (136.)

JOHN P. DENNIS: (137)

Have resided in Washington 28 years; amsanitary inspector for the District; knew Nailor 25 years last of his life; I rented a shop from him about 12 years ago; I lost sight of him then until the year 1878; I then met him again and he seemed to be always under the influence of liquor, and the defendant seemed to have control over him; I went to see him in the fall of 1878 in my capacity of sanitary officer; I talked with him several times in spring in 1878; he seemed despondent and discouraged, and wandered in his conversation; always intoxicated; when I went to see him about abating the nuisance on

his property he quarreled with me; the defendant interferred. He said the property belonged to him; she said it belonged to her. (136.) She afterwards abated the nuisance. I do not think he was competent in spring of 1878 to dispose of his property or transact business. *The defendant seemed to have an influence over him. She quieted him in his loud talking. His talk at that time was weak and childish.* 12 years before he would not have used it. He was a very changed man. (137.)

W. S. HURLEY; (138.

Have resided in Washington. Have been Lieut. of Police 18 years, and resigned in November, 1878. Knew Nailor since 1837. I worked for him about 8 years, knew him pretty well, and left him in 1845 and went to Balto. I returned here in 1853, and saw him frequently from that time until his death. Saw him, say once a week, the last 7 or 8 years of his life. When I went to work for him in 1837, he was one of the best business men I ever saw, but for the last ten years he has been very different. The last two or three years of his life he seemed to be under the influence of liquor most of the time, and was very dull and stupid, and continually complained of being unwell and very poor. Seven or eight years ago he commenced to go down and lost his self-respect. There was a great change in him. When I talked with him the latter part of his life he always talked of his poverty and trouble.

WM. H. BENNETT: (139.)

Have resided in Washington since 1862; am a constable and collector, and have been since July 1878; was constable for six or seven years in 1866; knew Nailor well; knew him from 1862 until his death; would see him two or three times a month; talked with him fre-

quently; he would tell me his troubles; have sued him for various persons; had official business with him only once since June, 1878; it was in fall of that year; I served him with a writ after making several efforts; the defendant would not let me see him; I saw for the last three or four years that he had gone to pieces; that his mind was not right, and had sympathy for him; I asked him why he did not leave defendant and go home and live; *he said he had no peace at home; that they were all trying to get his property away from him*, and that was why he went to live with defendant; that he could get all the whiskey and such things to suit him where he was [139] saw him several times in spring of 1878; he was not companionable and did not seem to know what he was doing; at that time he was a poor old broken-down man —almost what I would term an imbecile; have been an officer several years and have had considerable experience with such men; when I served the writ on him I thought it a shame; he paid no attention to it; he was not competent for seven or eight years to do any business; I would not have bought any property of him; in spring of 1878 he was a very different man from what he was in 1862; I could hardly state the comparison, there was such a change; towards the last of his life he would commence one subject and before completing what he was saying would change to another; he seemed weak and tremulous; he seemed to think everybody was trying to rob him; on one day he would praise Wash. and curse Ally, and the next he would praise Ally and curse Wash.; I never saw him in the presence of the defendant; I tryed to, but she would not let me; every time I saw him he was under the influence of liquor. [140.]

WM. A. FENWICK: [148.]

Have resided in Washington for 20 years; am in sash and blind business; knew Nailor about 20 years; did some business with him in Aug., 1878; sold him a bill of goods consisting of building material to repair house known as "Iron Clad"; saw him several times about that time; when I knew him 20 years ago he was a very active business man, and appeared to understand everything he did thoroughly; a lapse of 6 or 8 years then took place, during which I did not see him much; when I saw him in 1878 there was something about him which I thought was not right; he was forgetful, and could not remember what you said from one day to another [148]; when he ordered some material at one time he forgot all about it when it was sent, but the woman [the appellant] he had with him remembered all about it; I think this was in 1878; this was for a house in south Washington; in 1878 he was very weak and childish [149].

PERRY SHERWOOD: [184.]

I reside in Montgomery county, Maryland, near the District line; I am a gardener, and have lived in Montgomery county, Md., and in the District of Columbia for 30 years; I knew Allison Nailor for over 30 years; I drove for him about 25 or 26 years ago; I then worked for him about 12 or 18 months—afterwards about two years; I worked nearly three years as manager on his farm in Montgomery county, Md; saw Mr. Nailor frequently and knew him intimately up to his death; when I first knew him he was a good business man, and did not drink [184]. About 10 years ago I noticed he was a changed man; he drank and neglected business, and his mind seemed to wander; if you talked business with him

he would say "I am unfit for business to-day, some other day will do"; I am satisfied that for the last ten years he did not attend to much business; I never saw him sober but once in 10 years; I have seen him and Kate Conley together, and apparently she had great influence over him; I judge from conversations with Mr. Nailor that his mind was for some time weak and feeble; from eight to ten years I think he was unable to understandingly make deeds or transact important business [185]; I knew Mrs. Allison Nailor, Sr.; was about the house a good deal; she was as good a house-wife as I ever saw; I went several times, at her request, to get Mr. Nailor after he went to live with the Conley woman; I think the Conley woman found out that I was trying to get Mr. Nailor away, for she used to buy from my stall in the market, but after she found I had been after Mr. Nailor she stopped buying from me [186].

RE-DIRECT: [186.]

Mrs. Nailor tried to induce her husband to return home; she sent for him often and went after him herself.

THERE ARE TWENTY-TWO OTHER WITNESSES WHO KNEW NAILOR INTIMATELY FOR MANY YEARS MOST OF THEM MORE THAN 20, AND MANY OF THEM MUCH LONGER, AND WHOSE TESTIMONY IS SUBSTANTIALLY LIKE THAT OF THE PRECEEDING WITNESSES, ALL CONCURRING IN PRONOUNCING HIM INCOMPETENT.

One of these witnesses, Thomas Trundle (p. 159), testifies that the Conley woman kept and furnished Nailor with liquor, and kept him full of it. He also speaks (p. 161) of seeing him very drunk with the defendant at

Rockville, in the spring of 1878. (This was the time they went there to place upon record two of the deeds in controversy, as shown by other witnesses.)

Patrick McNamara (p. 165) also testifies that the Conley woman kept Nailor full of liquor all the time.

On page 124 Andrew J. Joyce, one of the witnesses for appellees, says that he bases his opinion that he was incompetent upon his general condition and appearance in late years, and the difference between him then and in former years, before the change in him Many of the other witnesses give the same or similar reasons as the ground of these opinions.

The witnesses Joseph Y. Potts (p. 176), Wesley Jordan [p. 180], Harriett Schofield [150], Henry Schofield [pp. 157–8], and many others speak of the efforts of the family to reclaim Mr. Nailor from the influence of the Conley woman

THE TESTIMONY OF THE FOLLOWING WITNESSES SHOW THAT THE CONLEY WOMAN WAS LEWD AND ABANDONED BEFORE NAILOR MET HER:

W. T. Nailor;
Harriet Schofield, (pp. 149 to 152;)
James S. Topham, (p. 154;)
Henry Schofield, (p. 155, &c.)

THE CONLEY WOMAN HAD UNLAWFUL RELATIONS WITH OTHER MEN, AND HER CHILDREN MENTIONED IN THE DEED WERE OF DOUBTFUL PATERNITY.

See testimony of following witnesses:
Thomas Trundle, (p. 162;)
Patrick McNamara, (p. 166;)
Wm. E. Edd, (p. 187;)
Richard T. Brown, (p. 193.)

NAILOR HIMSELF DECLARED AT TIMES THAT HE DID NOT BELIEVE THE CHILDREN WERE HIS.

MUCH OF THE TESTIMONY ON BEHALF OF THE APPELLANT CORROBORATES THAT OF THE APPELLEES, BY PROVING IMPORTANT CIRCUMSTANCES SHOWING INCOMPETENCY AND UNDUE INFLUENCE.

Extracts from Defendant's Testimony.

The following abstracts are made from the appellants' testimony, there being much more of the same tendency:

NICHOLAS CALLAN,

The notary public, before whom the deeds of March 29th, 1878, were acknowledged, testified as follows: Have known Allison Nailor, Sr., for 40 years; the deeds were acknowledged at my office, 1422 G street; I conversed with Mr. Nailor on that day upon the subject of the deeds and his health; he was not intoxicated and seemed to be of sound mind; he said he was feeling ill; I always considered him an uneducated, but shrewd, enterprising business man, and was understood to be close in his dealings; in my judgment he was capable of executing those deeds on that day (208.)

CROSS-EXAMINATION (209:)

Knew Mr. Nailor most intimately between 1841 and 1854–5; heard he left his family to live with a lewd woman; do not know her name; saw very little of him after I heard of his leaving his family; saw and talked with him perhaps four times during the last four or five years of his life; when I first knew him, and up until 1854–5, he was an active business man, engaged in the livery business and real estate speculations; noticed a

very material change in his business habits and his appearance in his latter days; upon the four or five occasions when I saw and spoke with him I found him reduced to a mere skeleton and scarcely able to speak intelligibly (209;) these occasions ran from the time he left his family until his death; on one of these occasions, the first I think, I met him at the City Hall; he was sitting in a buggy and looked so feeble and emaciated that I offered my assistance to help him out, which he declined; he spoke of his reverses and ill health; upon another occasion I visited him officially at the residence of his son Allison; he spoke of our long acquaintance and of his speedy dissolution; I saw his son Allison after leaving the room and suggested to him that he ought to prevail upon his father to make a will; this was more than 2 years before he executed the deed to Catharine Conley; another occasion was at his house on 13½ street; I called with a Mr. McCabe, a clerk in the Q. M. G.'s office, to take an acknowledgment to a deed to said McCabe; he was reclining on a sofa and was unable to execute the deed on account of his infirmities, and told me to leave the deed, and if it was all right he would call at my office and execute it, but he never did. The last occasion my office was over the National Metropolitan Bank, probably fifteen steps from the street to my door, and he complained very much of having to come up those steps; that it completely exausted him and he came to me because I always did such business for him; he came to acknowledge three deeds, which all have the same date and were already prepared; he either signed them in my presence or acknowledged the signature to be his—I don't know which; *I do not know who the deeds were to; he did not ask my advice about the propriety of making them;*

Mr. Nailor was not intoxicated when he executed the deeds; there was debility of body; he engaged in no business to my knowledge after he left his family (211.)

THOMAS MACCABE (211:)

A messenger in the office of the Depot Quartermaster; have resided in Washington 6 or 7 years; knew Mr. Allison Nailor, Sr., for about 4 years. and used to sit with him; I made out a will for him and two or three deeds, (211;) *he said he was going to make a will and I prevailed upon him to let me make it out for him, and when I took it to him he laid it aside until he could find time to look at it, and told me to call again, which I did, when he told me that he often transferred property on forms no better than that, but he expected that it would be disputed after his death and he must consult some one else about it; at his request I went after Mr. Nicholas Callan and got him to go to the house, and Mr Nailor gave him the papers to look at, and asked for his opinion as to the validity of the same; Mr. Callan told him that he (Nailor) was as competent to judge of their validity as he (Callan) was; I had 6 or 7 conversations with Mr. Nailor on the subject during three or four months (212,) and asked him for a description of the property to be conveyed, and at his request went to the Record Office and got the best description I could of the same and inserted it in the instrument and deeds; the will was executed before he instructed me to draw the deeds (213;) the usual length of my visits to his house was a half an hour or an hour; sometimes he would take one or perhaps two drinks—about half an hour between- in an evening, usually in water, about two thimblesfull to each drink.*

CROSS-EXAMINATION: (214)

I was born in Edinberry, Kings county, Ireland, and left there in 1858 or 1859; never had a formal introduc-

tion to Nailor; lived near him nearly two years; I used to see him nearly every day when I lived near him unless he was sick; used to go into his house very often, about two or three times a week, some weeks not at all. Have seen him under the influence of liquor—can't say whether he was intoxicated; saw him in the first named condition three or four times, not more (215.) Sometimes he would take one, sometimes two, and upon one occasion three drinks—a good deal of time between. I usually stayed half an hour at a time; always noticed the quantity of liquor he would take at a drink; I couldn't help observing it when he drank before me. I remember because he always made a point not to drink too much, and would always call my attention to the fact when I went to fill out for him, (216) I was familiar with the family. I know Kate Conly and have seen her there; can't say how often. I met her the first time I went into the house, and generally every time after. Have talked with her; (217) was never formally introduced to her; *she was sometimes present when I talked to Mr. Nailor, perhaps once or twice when he talked of the deeds. I cannot swear that she did not take part in the conversation; I recollect that upon one occasion she went up stairs when we began to talk upon the subject, I should suppose her to be Irish and about thirty years of age. I don't know where the will is now; I gave it to Mr. Nailor. I prepared the deeds for him of his Maryland farms, and some city property, the same now in dispute, about three years ago, which I think were never executed by him* (218). *He decided that they were not strong enough legally and he desired to have the legal opinion of some one on them, and I got Mr. Callan to call and examine them, but he declined to express an opinion, saying that Mr. Nailor was competent to judge of the matter for himself; I don't*

think Mr Callan read the deeds but Mr. Nailor acquainted him with the purport of them and acquiesced in his judgment. There were three or four deeds (219) *I wrote a will at his request, perhaps two or three months before I wrote the deeds. I don't know whether he ever executed it; I think I recorded it for him:* (220) *never offered him any suggestions because I knew he would not permit it. I requested him to let me prepare the will and the deeds after he had decided to have it done. Never attempted to influence him in the matter; am not now, and never have been a lawyer or notary public. Have prepared two or three deeds before this; Mr. Nailor paid me forty dollars altogether for that work;* (221) *he employed me at my own request and did not object to paying me that amount for it. The subject was mentioned in the general course of conversation and he seemed to think it reasonable. It was in the Spring of the year, about two years ago, I do not recollect that he expressed any intention of making any provisions for Kate Conly, after his death* [222] *I think Mr. Nailor, and perhaps Kate Conly told me that Mr. Carrington solicitor who represented her in this suit, said the deeds prepared by me had better not be used; that a lawyer could prepare some that could cover the matter better.* [223] I said the other day that I thought I took the deeds to Mr. Carrington but I don't know who took them Don't know whether Kate Conley took them or not, Mr. Nailor first told me that they had been taken to him; think Kate Conley told me also. [224] Have met Kate Conly perhaps a dozen times since the institution of this suit, once at my house. Have seen her at Gen'l Rutherford's, here and at her own house: never met her anywhere else that I recollect; have given my testimony before in this case; I think it was written down by Mr. Carrington and Gen'l Rutherford; don't recollect whether I swore to it or not; I think she was present; I have been

with her to Gen'l Rutherford's once or twice at her request, but did not talk about this case, simply answered his questions; think she was present while I was giving my testimony; (325) have seen her at her house about nine or ten times since this suit was brought; have not talked a great deal about this case; I may have expressed my opinion as to the probability of her being able to hold the property; my wife may have called upon her once; she has never called on my wife; she has been in my house six or seven times. (226) I feel quite kindly towards her; am here simply to speak the truth; it is immaterial whether she succeeds or not; *she came to my house before I prepared those deeds and before I became very well acquainted with Mr. Nailor.* (227) *I said yesterday that he said it would make it more binding to have deeds as well as the will; that was after the will was made.* Of course I knew that he was living with Kate Conley; I don't know that I ever heard that she was not his wife; probably have heard so; from what I saw her doing I should suppose her to be his wife, nursing what I supposed to be his children, and himself, and very kindly, too, him when he was ill; Mr Nailor told me at the time I prepared the deeds that his papers were in his wife's keeping; I did not understand him to refer to Kate Conley. [229]

Exhibit C. C., No. 1, is shown the witness and he says that is not the paper from which I copied the will Exhibit. [For this Exhibit see record p. 231.]

CROSS-EXAMINED.

I decline to answer whether I know in whose handwriting this paper (Exhibit C. C. No. 1) is; I recognize Allison Nailor's handwriting there; I decline to answer

whether I recognize any other name there; I think I brought it to be recorded (231.)

(The witness some eight months afterwards consented to answer and was recalled for that purpose and testified as follows:)

THOMAS M'CABE'S CROSS EXAMINATION CONTINUED (389.)

The paper marked C. C., No. 1, is the will which I prepared for Mr. Nailor; he had it rewritten by a lawyer named Schreiner for fear it was not right; don't recollect when I gave it to him; *I remember that he was sick, but don't know whether it was in 1878, or not, and can't say whether I gave it to him before or after that illness, don't know how long it was after I gave it to him that he signed it; have been hurt on the head with a brick since I last testified and cannot remember;* Mr Sehreiner is a clerk in the Quartermaster's Department, and was at the time of writing that paper; he is a professional man; don't knowwhere he lives [389.]

NICHOLAS CALLAN,

Called by the appellees in rebuttal, testified as follows:

On the occasion referred to in my former testimony, when I went to the house of Mr. Nailor to take the acknowledgement of the deed from him to (the witness) McCabe, *and found him unable to execute it in consequence of his infirmities, I went at the request of Mr. Mc Cabe, who came to my office and informed me that Nailor desired to see me for the purpose of taking his acknowledgement to a deed. I got the impression from Mr. Mc Cabe that the proposed deed was to him; never went to the house of Mr. Nailor with Mc Cabe or at his request on any other occasion.*

Ques. Mr. McCabe, who has testified in this case, in giving an account of what transpired on that occasion,

says that Mr. Nailor showed you the papers, and asked you your opinion as to their validity; whether they were legally made out so that the property could be transferred by them; that you made answer that there was no necessity for your doing that as he, Mr. Nailor, was fully competent to know whether they were legally made out or not; he further states that the papers referred to on that occasion were deeds conveying the property in controversy in this suit to Kate Conley for herself and in trust for her children, or some of them, which papers had been drawn by him at the request of Mr. Nailor. I wish you would state whether or not, upon that occasion, any papers were exhibited to you by Mr. Nailor or Mr. McCabe, and if so, what they were, or what they purported to be, and whether your opinion was asked, and what your response was, if any?

Ans. *There were no papers submitted to me on that occasion either by Mr. McCabe or Mr. Nailor; my opinion was not asked in relation to any papers whatever; and I gave no opinion. When we arrived at Mr. Nailor's dwelling we found him reclining on a sofa, covered with a sheet or covering of some kind; McCabe remarked that he brought me to take his (Nailor's) acknowledgement to a deed. Nailor promptly replied that he would not execute it and refused to do so, on the ground that he did not understand it. The deed was not submitted to me and I never saw it; never gave any opinion; McCabe was evidently very much disappointed at the refusal of Nailor to sign the deed, this was on the 23d day of January, 1878.* (392.)

CHARLES M. HAMMETT: (396.)

(Called in rebuttal by appellees.)

Am a practicing physician; I attended A. Nailor, Sr, professionally in January, 1878, and in January, 1879, when

he died—perhaps on one or two occasions before that In Jan'y, 1878, I made him about a dozen visits; he had bilious intermittent fever at that time; found him with considerable fever and delirious; he was quite sick, but not dangerously ill; I made him 10 or 11 visits on consecu'ive days and towards the last, passed over a day or two and then visited him again; on the occasion of my last visit to him I witnessed a paper; my visits commenced in January 1878; I never witnessed any other paper for him; it was not read in my presence; I did not know its contents; Mr. Nailor said something at the time about conveying some property; I did not pay any attention to it. Two others with whom I was not acquainted signed witnesses with me. I never saw them before, and would not know them (397); I fix the time by reference to the entrys in my books made at the time.

(Ex. C. C., No. 1, is shown to him, and he says it is the paper he witnessed) My acquaintance with Nailor was almost entirely of a professional character (398).

BRIDGET KYNE—CROSS-EXAMINATION.

I was born in Galway, Ireland and so was Kate Conley. Have been quite intimate with her and have visited her frequently—the house I now live in belongs to Kate Conley I believe, one of the houses in controversy; I keep a restaurant and keep liquors and boarders, and have a free lunch at dinner time; she used to nurse him night and day and forget everything else to attend to him; she was very kind to him, he seemed to be very fond of her too; saw them together much; he talked of how good she was to him; he forgot more than I ever knew—I don't mean to say that he forgot anything, but he knew his own business and did not need anybody's advice (244);

he would talk foolish—I mean like all men who take too much: have not seen him intoxicated very often, have seen him drink in his own house—not much—a little milk toddy; sometimes he would mix it himself, sometimes the colored girl, sometimes Kate (226); she gave me a certificate or bond, the number I don't know, when her boy, Walter, died; I don't know whether it was for $300 or more; I loaned her money on it and I was to hold it until she repaid it, I returned it to her about four or five months ago; I think Mr. Nailor's name was on the back of the bond in writing [247]; I should feel rejoiced if Kate should win this case; I saw her since I was here last night; stopped there on my way here this evening.

MARY E. BALLENGER.

Nailor used to drink milk punches and apple toddy, sometimes twice a day, sometimes more; I would see her [Conley] mix it up for him and hand it to him, I think I saw him intoxicated once; I never saw any signs of insanity and he had an excellent memory and used to talk of things a long time back, [251]; had a conversation with Mr. Nailor in his room on the morning of Christmas, 1878, where he was eating breakfast; he was alone and said he was in great trouble, and without mentioning any names he said they were trying to kill him, and would do it. I laughed at him; he said they were trying to starve him, and would fight over his dead bones after he was gone; I was with him during his last illness; when he was asked if he wanted any of his family, he always said no; he was baptized by a catholic priest the day before he died;

CROSS-EXAMINATION: [252]

My husband is living; I lived for thirteen months with Kate on 13th street; I had been living with her for about

five months when Mr. Nailor died;—just had rooms in the house, did not pay any rent; used to do sewing for Kate and Mr. Nailor; he offered me the rooms for company for him. We had three rooms; the house is on 12th street, the same one Kate lives in; I did not pay any rent after he died; I stayed for company for Kate; Last saw Kate to-day, saw her yesterday at my house, we walked out together; there was scarcely a day but he spoke of his speedy death; his health was very poor up to his death, very feeble; I never knew him to do any work, when he was in the house he was always lying down—up and down all day long, he was always complaining and I used to go in and talk to him and ask after his health, this was before the children died; have seen him drink frequently, sometimes two or three times a day; he always took it in his dinning room when I saw him; he would take milk punch and sometimes hot apple toddy. Kate prepared it for him; he generally asked for it [257] have heard her try to persuade him not to take it, but he would say he wanted it and she would fix it for him.

ANN MCCUE: (264)

Knew Allison Nailor, Sr., for six years before his death. Have known Kate Conley same length of time. Was very intimate with her. She was very kind to him. Heard him tell Kate once that he had made his will and didn't care who knew it (266). Can't remember when this was. It must have been nearly three years before the children died. I saw the Doctor's carriage and went over to inquire who was sick and he said no one, that he had made his will and left a couple of houses to poor Edna and a farm to Willie. He used to say he would leave her independent for taking care of him. She took better care of him than I would. Kate is a Catholic and so am I (267)

[ob]. Kate and I are friendly as neighbors. I think she ought to receive something for taking care of him. Knew the relationship between them [268]. I advised him to go home to his family and he swore at them and said they ill-treated him, and that he would not go. This occurred more than once. She was very kind to him, beyond any kindness, She used to wash his face for him, bathe his feet and comb his hair when he was going out. I don't know whether she did it to make him attached to her, but she did it [270]. I came from Wicklow county, Ireland [271].

ROBERT MEREDITH: [272] (Colored man.)

Am a carpenter. Knew Allison Nailor, Sr., about four years. Did work for him, building and repairing. Built one house in the country and have one uncompleted. One he drew the plan of on the ground with his cane I drew the plan on a board and showed it to him and he liked it, and we agreed upon the price, and he showed me where to put it and told me to go ahead, and I did so and finished it.

Nailor employed me but Kate Conley paid me [279]; the first week I worked in the country he came out twice, and he came out often and always had the children and Kate Conley, and the cook, to take care of the children; after the children died he used to bring Kate Conley with him, and he used to bring a little flask of something to drink and has offered me some; never saw him drink out there; have seen him drink milk punches at his house and brandy and whiskey. Have seen Kate Conley prepare it for him quite often, altogether [280]. She was very kind to him. He was not very well and didn't do much during that time. I remember that in March, 1878, I saw a paper executed, don't know wheth-

er it was a will—was told it was a deed. Messrs. Douglass, James Allman and Dr. Hammett, were there. He told me it was a deed.—part to Willie and part to Edna. Kate Conley was there. He sent me for Mr. Douglass and Mr. Allman. He was sick at the time but not in bed, sitting up; I may have told Mr. Wash. Nailor and Mr. Matthew Trimble, at my shop, on one of the occasions mentioned, that the old gentlemen was sick in bed, and had to be raised up to sign the will and that Kate sent me for Douglass and Allman, because I did not want to be tampered by people examining me on the street, but now I am on the stand and sworn to tell the truth. I told them on the same occasion that I didn't think the old man was competent to transact business and that I wouldn't buy any property from him.

The reason I told them that was because I did not want the hard feelings of anybody. I didn't want to be called as a witness for anyone.

ANN CLARK, (283:)

Knew Mr. Nailor for about 8 years, and became acquainted with Kate Conley, (284;) was there one day when he came in, and Kate pulled off his overcoat, and he said, "there's papers in the pocket of that overcoat; you take them out and take of it; they are all right now. but they are to be put on record." He took some money out of his pocket, and said here is your change, and gave it to Willie: she tooked the papers and looked at them and seemed very much pleased; I am a Roman Catholic, and think I am 60 years old, (285.)

CROSS-EXAMINATION: [285]

I visited my sister when she lived at Mr. Nailor s; I did not go often because I did not like Kate living with Mr.

Nailor; I thought I could influence her to leave but she always took me into the room with him and I could not speak to her then, the only time I was there when he was not was when he brought the papers in, she was very kind and attentive to him; during the time I knew Mr. Nailor he seemed to be in bad health generally; have visited Kate 4 or 5 times since he died; she has been to see me at my house three times I think; we are friendly at present; I was born in county Antrim, Ireland. [289]

MARY S. WILSON: [289]

Became acquainted with Allison Nailor, Sr., and Catharine Conley in [1871] I visited them quite frequently; [290] have seen him take a small amount of liquor in the house—not enough to make him intoxicated; have seen him go out perfectly sober and come in looking as though he was in liquor, have heard him tell little Will that he loved his little children because his older ones were trying to cheat him out of all he owned [291.]

CROSS-EXAMINATION.

She kept a little grocery store, a little of every thing used to see Mr. Nailor when I went in to see to the store and talked to him. He used to wait upon me. [294] He spoke to me a good many times about making provisions for Kate's children, and he told me himself that he had made a will or deed in favor of Kate and her children. His mind seemed to run a good deal on that. I told him that I thought it only right that he [295] should provide for them. She always treated him with all kindness.

KATE WATSON [303]:

I have known Allison Nailor, Sr., 4 years; know Kate Conley; my house was on the same lot as theirs'. Have

heard others speak of Kate Conley. Her reputation for chastity is very good [306].

CROSS-EXAMINED [306]:

He had three very bad spells of sickness during that time. Kate was very kind to him. I can hardly answer why I say Kate has a good reputation. Have visited Kate since Mr. Nailor died.

ROSANA YOUNG.

Have known Mr. Nailor and Kate Conley over six years. I lived four doors from them and used to visit their house sometimes once, sometimes twice a day. He was always talking about his children—never about his business. Kate treated him like a baby, that is she washed and dressed him. Have heard him ask Kate to mix him a milk punch or a mint julep.

CROSS-EXAMINATION [310]:

Catherine Conley was present when Mr. Nailor read the deed to me, made in 1872 for the benefit of Willie and her. It was in his bed room about five or six years ago. She asked him to do it so that I could see that the house was deeded to the child.

WILLIAM F. BEANS [317]:

Rented the farm in Maryland [318] from Nailor which was afterwards conveyed to the Conley woman for benefit of Willie and herself.

CROSS-EXAMINED [320]

I am still living on one of the farms in controversy in this suit. After the death of Nailor I refused to pay the rent to her until I was sure she had a right to it, and she sent me to Mr. Carrington for him to convince me that

she had a right to it, which he did [321]. He generally had somebody with him when he came out to the farm, sometimes Miss Conley and sometimes his little boy (325); they would stop at Mr. Darcey's; he usually sat in the shade, and Conley would generally sit with him. I generally found him in the house when I called there (326). He was a man that drank a little all the time; have seen him drink sometimes in his own house; have seen him drink in presence of Kate Conley (327), as often as occasion required, and at my place out under the shade. He sometimes brought liquor with him. Kate Conley has been at the farm several times since Mr. Nailor died, and when she came there she stopped at my house; I heard that Conley was not married to Mr. Nailor and that he had a wife and family living. I am a married man and my wife had heard the same things about her; she came up four times since the old gentleman's death; once she stayed one week; near two weeks on another occasion, and shorter periods at the other times; she came out there with me. I have called on her frequently on business since the old gentleman died; I furnished the house with butter, eggs, &c.

She made my wife a present of a set of furniture.

WM. LEACH'S

testimony taken by complainant in rebuttal, p. 400, contradicting this witness after proper foundation laid, shows that he was unduly intimate with the Conley woman.

DANIEL MACGUIGAN: [349.]

Was acquainted with Allison Nailor, Sr.; knew him about five or six years; lived in the house with him seven or eight months.

CROSS-EXAMINATION: [350.]

Was born in Ireland; have seen Mr. Nailor intoxicated many times indeed; have seen him drink in the house. Kate would sometimes fix liquor up for him; she was kind and friendly to him; have known Kate about 15 years; she had no property that I know of.

WILLIAM BALLENGER [354]:

Am a laborer in the Public Grounds and Buildings. Knew Allison Nailor, Sr., about three years.

CROSS-EXAMINATION.

He would take his whiskey regularly; have seen Kate Conley mix it for him in the house; know a man named Flay Bean [the witness for defendant] have seen him at Kate Conley's since Mr. Nailor died, about once a week, sometimes twice [356]; Kate Conley asked me to come and testify what kind of a house she kept, whether quiet or not [357]; she asked me to testify that Mr. Nailor was not insane, as people said he was.

Forty-two witnesses, business men of good judgment, who knew Nailor intimately for many years, and were able to compare him in the prime of life, with what he was after he abandoned business and his family and lived with appellant, have given their opinions that he was not competent to make conveyances after he left home in the latter part of 1870 and testify to facts which show that their opinions are well founded.

Of the witnesses who testify for appellant upon this point, a large majority were her intimate associates, and acquired all the knowledge they had of Nailor while he was living with appellant. They could not compare

Nailor with himself. Their vocations and testimony concur in showing them to be of inferior intelligence and judgment, while many of the facts to which they testify on cross-examination corroborates the testimony on behalf of appellees as to the con lition of Nailor and appellant's influence over him.

Only three of the witnesses on behalf of appellant who give their opinion that he was competent; knew Nailor before he lived with her, so that it may fairly be said that the testimony in behalf of appellees showing incompetency and undue influence is not weakened, but rather strengthened and intensified by the testimony in behalf of appellant.

Circumstances tending to Show Dementia and Imbecility in Mr Nailor and Undue Influence over him by the Defendant.

The first of the deeds in point of time, sought to be annulled by this suit, is dated on the 27th day of November, 1872, and was admitted to record in the District of Columbia on the 27th day of May, 1873. This deed is made by Allison Nailor, Sr., to Kate Conley, and it provides that the property therein mentioned is to be held in trust for Willie Ernest Nailor, the child of the parties to the deed.

Notwithstanding this, some time after this deed was admitted to record, on the 17th day of October. 1873, Mr. Nailor filed his answer to his wife's petition for divorce, Equity cause No. 3,282, and in response to the allegations of the petition that he was guilty of adultery

with Kate Conley, he states as follows in the eighth paragraph of his answer:

"8. The defendant denies that on the 25th day of October, 1872, and at various other times, as alleged in the said petition, or at any time, he, this defendant, has committed adultery with one Kate Conly or Connelly, *at a house in Fourteenth street, southwest*, in the said city of Washington, belonging to this defendant, *or at any other place*, or that he *has lived* and yet *continues to live*, in a state of adultery, with the said Kate Conly or Connelly."

It cannot be presumed that a man of sound mind, uninfluenced, would have made a statement so diametrically opposed to the admissions of a deed which he had already caused to be placed upon the public records. Nor can it be successfully argued that it is evidence of a purpose to deceive, for both statements are equally public. The only rational way to account for it is upon the hypothesis that the man's mind and will were gone, and that he was used as a mere machine by the defendant. This becomes more apparent as we look further in the record of that cause.

It will appear by an examination of the record in that case that the said Allison Nailor, the defendant therein, evaded the service of a subpœna to answer the petition; that he was secreted and kept away from the officers by the said Kate Conley; that when process to answer the bill, and the order to pay alimony, were finally served on him after much difficulty, he paid no attention to either; was adjudged in contempt of Court; attachments were issued against him, but she still succeeded in keeping him away from the officers of the law as well as his family; and finally the Court was compelled to sequester his whole estate, and it remained in the hands of a sequestrator for some time, and thousands of dollars of his estate were squandered to pay hundreds

To show still more conclusively that his conduct in the defence of that case, and the attempts to baffle the Court in securing justice, were inspired, dictated and controlled by the defendant, Conley, a comparison is made of one paragraph in the answer of the defendant in this suit, with a paragraph of the answer of Mr. Nailor in the divorce snit in relation to the alleged unkindness of Mrs. Nailor to her husband:

From paragraph No. 4 of Nailor's answer to the petition for divorce.

"On the contrary, this defendant avers and charges the fact to be, that on or about the month of November, 1870, the petitioner ordered and commanded this defendant to leave the said house, having in like manner, upon frequent and repeated occasions previous thereto, so ordered and commanded him; that her treatment of this defendant was at the time, and for a long time previously had been harsh and unkind, in somuch that this defendant was compelled to occupy apartments separate and apart from the said petitioner; that thereupon, being fully convinced by the conduct of the petitioner, and her manifest disposition towards him, that he could not remain peaceably and quietly with the said petitioner, this defendant withdrew from the said house, and has not since returned thereto,

From paragraph No. 6 of the answer of Kate Conley in the present suit:

"On the contrary, she charges the fact to be that in 1870, said Rachel ordered said Allison to leave the house in which they were then residing, as she had frequently directed him to do before and her treatment of him at that time, and previous thereto, was harsh and unkind to such a degree that they were compelled to occupy separate apartments, and said Allison, being convinced that he could not remain with said Rachel peaceably or with safety removed from said house, of his own volition, without any inducement from defendant or any one else, so far as she is informed."

There was absolutely no evidence introduced in either case, tending in the slightest degree to establish the above charges. On the contrary, the testimony on behalf of complainants proves that Mrs. Nailor was one of the most devoted of wives, and shows that her exertions and those of her children, to reclaim him from defendant, ceased only when further effort seemed worse than fur-tile.

On Aug. 13, 1873, a sequestrator was appointed in the divorce suit, and the estate of said Nailor was committed to him for the purpose of raising money and paying Mrs. Nailor the alimony of $100 per month, finally fixed by the court. It remained in the hands of the sequestrator until April 12, 1877, during which time Nailor, under the influence of the Conley woman, resorted to all sorts of means to prevent his estate from coming to the hands of the sequestrator, and to defeat the payment of ali mony. During this time and afterwards a large quantity of real estate was sold, sacrificed for a mere nominal sum for the purpose of raising money to pay alimony and other debts, and the estate very much reduced. At the date last above mentioned, Allison Nailor, Jr., one of his sons, became security for the payment of future alimony, and the sequestrator was discharged. To secure this arrangement Nailor was prevailed upon to give his son, Allison, a power of attorney to collect all the rents and profits of his real estate and pay the alimony, taxes, &c. But soon afterwards, under the influence of the defend-ant he commenced conveying away his real estate to her and her children, in violation of the power of attorney, and the estate, having, at that time, been decreased to such an extent as to be scarcely sufficient for the payment of alimony and expenses, a suit was brought by Allison

Nailor, Jr., against his father and the defendant to restrain further conveyances, and an injunction granted, which remained in force during the life of the said Allison, Sr. The proceedings in this suit, which were offered in evidence by the appellant's solicitors, also afford striking illustrations of Nailor's demented condition and the controlling influence of defendant over him. But for the injunction in that suit it may be fairly presumed that defendant would have procured the little residue of the estate to be conveyed to her and her children.

The evidence and surrounding circumstances, clearly demonstrate that Mr. Nailor had neither strength of body or mind to control his own actions, after he went to live with the defendant and that his will and his actions were completely dominated and controlled by her.

LAW POINTS.

There are three principal grounds upon which a court of equity should declare void the deeds mentioned in this cause viz:

FIRST.—THE INCOMPETENCY OF A. NAILOR, SENIOR.

SECOND.—THE CONFIDENTIAL AND ILLEGAL SEXUAL RELATIONS EXISTING BETWEEN A. NAILOR, SR., AND THE GRANTEE IN THE DEEDS AT THE TIME OF THE TRANSACTIONS.

THIRD.—UNDUE INFLUENCE.

It is claimed that such incompetency is shown as to render the deeds from the grantor to Catherine Conley void if there was no other element in the case. It is also claimed that the relations between the parties, and the circumstances attending said transactions were such, as to render the deed invalid, even had the grantor been competent to transact business under ordinary and more

favorable conditions. But when the three points are combined they constitute a case imperatively demanding relief.

Cases of undue influence, unconnected with other circumstances are very rare. Most generally there is added the element of mental weakness in some form or confidential relation between the parties, so that "undue influence" is a relative term, and what would amount to it in one case might not in another. In order to determine whether it exists in a given case, the relative conditions, positions, and circumstances of the parties, and the nature, considerations, inducements, objects, and effects of the transactions, must be considered. It is, therefore, better and more convenient to consider the three general grounds upon which relief is sought in this case together.

The principle upon which courts of equity grant redress in this class of cases is that one party by improper means or practice has gained an unconscionable advantage over another.

In order to obtain relief, absolute disqualification of the party imposed upon need not be shown. Wherever there is a great weakness of mind, arising from age, sickness, intemperate habits, or any other cause in a person executing a conveyance as a gift, or for an inadequate consideration, a court of equity will set it aside.

Harding v. Wheaton, 2 Mason, C. C. R., 378;
Same case reported as—
Harding v. Handy, 11 Wheat., 125;
Allore v. Jewell, 94 U S., 506;
Jaycox v. Jaycox, 40 Mich., 421.
Same case, 29 Am. R., 547.

The facts in the case of Harding v. Handy are very similar to those in this case. The bill was filed by some of the heirs of Comfort Wheaton, to set aside deeds made by him to his son-in-law, Handy, at a time when he was alleged to be incompetent, and for an inadequate consideration.

The opinion at the Circuit was delivered by Mr. Justice Story, and nearly all his reasoning seems to be exactly in point in the present case.

"It cannot be denied," said Judge Story, "there may be a degree of weakness short of legal incapacity, which would leave the party so entirely open to influence and imposition, to the persuasions of friends, and the undue operation of slight motives, that it would be unjust to hold his conveyances entitled to the same sanction as those of a person in possession of a vigorous understanding. *Extreme weakness* will raise an *almost necessary* presumption of imposition, even when it stops short of *legal incapacity;* and though a contract in the ordinary course of things reasonably made with such a person might be admitted to stand, yet if it should appear to be of such a nature, as that such a person could not be capable of measuring its extent or importance, its reasonableness, or its value, fully and fairly, it cannot be that the law is so much at variance with common sense, as to uphold it."

The case was affirmed by this Court. Chief Justice Marshal, delivering the opinon,said

" He [the grantor] was addicted to intoxication and to many vicious habits in the course of which fears were excited in his family that he would waste all his property or convey it to his profligate companions.

* * * * * *

"We have examined, with attention, the immense mass of contradictory evidence which the record contains. A number of persons, and among others the witnesses to the deeds, express the opinion that he was capable of managing his affairs and of disposing of his property. This evidence, however, is met by such a mass of opposing

testimony as can scarcely be resisted. Among the numerous witnesses who testify to the imbecility of his mind, *are many who had been long and intimate acquaintances.*

Some of the witnesses add to their opinion of his imbecility some circumstances on which the opinion is founded, which cannot fail to make a deep impression on the mind. Ziba Olney says that he was acquainted with C. W , for the last five years of his life, who, for the last fifteen months of them, resided in his family. 'That during the whole of these times he appeared to be childish and incapable of transacting any business. The reasons of this opinion are: that he would frequently repeat the same questions, and would several times in the same day ask what day of the week it was. At short intervals he would talk rationally, and then would break off from conversation to singing, and from that to crying. That he would frequently go out in the night and day naked, except his shirt. That he would frequently break out in profane language, and at other times preach.' Several other witnesses describe the situation and conduct of this afflicted old gentleman, in a manner to add great weight to their opinion that his faculties were prostrated. Many even of those witnesses who depose to his competency, declare that the public opinion and language of his neighborhood was that his mind was deplorably impaired; *and the conduct and declarations of his family, including the defendant, Asa Handy himself, show a settled conviction that C. W. was incapable of managing his affairs.*"

* * * * * *

"The various circumstances add so much weight to the opinions of those who depose to the incompetency of C. W., that the mind cannot withhold its assent from that conclusion."

"If these deeds were obtained by the exercise of undue influence over a man whose mind had ceased to be the safe guide of his actions, it is against conscience for him who has obtained them to derive any advantage from them. It is the peculiar province of a court of conscience to set them aside. That a court of equity will interpose in such a case, is among its best settled principles. The cases cited in the argument; which we will

not repeat, place this beyond the possibility of question. It was; therefore. proper to set aside the deeds, and to direct the defendant, Handy, to account for the money he had received under them."

To the same effect is the case of Allore v. Jewell, above cited. It was a bill by the heir to set aside a deed of the ancestor alleged to have been procured by undue influence over a person of great weakness of mind. The opinion was delivered by Mr. Justice Field. He says:

"Numerous witnesses were examined in the case and a lage amount of testimony was taken. * * * And it must be admitted that the facts detailed by any one witness with reference to the condition of the deceased previous to the last illness, considered separate and apart from the statements of the others, do not show incapacity, to transact business on her part, nor establish insanity, either continued or temporary. And yet, when all the facts stated by the different witnesses are taken together, one is led irresistibly by their combined effect to the conclusion, that, if the deceased was not afflicted with insanity, for some years before her death, her mind wandered so near the line which divides sanity from insanity as to render any important business transactions with her of doubtful propriety, and to justify a careful scrutiny into its fairness."

The opinion then recites the peculiarities and habits of the deceased as detailed by the witnesses. most of which are like these proven in this case, and then adds:

"But when all the peculiarities mentioned of life, conduct and language are found in the same person, they create a strong impression that his mind is not entirely sound; and all transactions relating to his property will be narrowly scanned by a court of equity, whenever brought under its cognizance."

"It is not necessary, in order to secure the aid of equity, to prove that the deceased was at the time; insane, or in such a state of mental imbecility as to render her entirely

incapable of executing a valid deed. It is sufficent to show that from her sickness and infirmities she was, at the time, in a condition of great mental weakness, and that there was a gross inadequacy of consideration for the conveyance. *From these circumstanees imposition or undue influence will be inferred.*"

The Judge then refers to Harding v. Handy, and proceds to say:

"The same doctrine is announced in adjudged cases, almost without number; and it may be stated as settled law, that whenever there is great weakness of mind in a person executing a conveyance of land, arising from age, sickness or any other cause, though not amounting to absolute disqualification, and the consideration given for the property is grossly inadequate. a court of equity will upon proper and seasonable application of the injured party, or his representatives or heirs, interfere and set the conveyance aside."

If disease be once shown to exist in the mind, it matters not that it is discoverable only when the mind is addressed to a certain subject, to the exclusion of all others, or that the subject on which it is manifested has no connection whatever with the matter before the court, the party must be pronounced incapable.

Smith v. Tibbett L. R., 1 Probate and Divorce, 398;
Delafield v. Parish, 25 N. Y., 9;
Davis v. Calvert, Supra;
Brown's Med. Jur. of Insanity, § § 207, 285;
Ins. Co. v. Terry, 15 Wall., 580.

In Smith v. Tibbett, Ann Thwaytes made a will in favor of Smith and others in March, '66. Tibbett, the contestant, was her only sister and relative. The con-

test was on the ground of an unsound mind and undue influences of Smith and others.

The opinion was delivered by Wilde, J.

The testatrix was eccentric upon the subject of religion; not an enthusiast—believed herself to be the Holy Ghost. It was contended in favor of the will that she was a monomaniac on this subject, but otherwise of sound mind. The following passages occur in a very exhaustive and learned opinion:

" 'Compare a man with himself,' says Dr. Ray, 'his acts and thoughts now with his acts and thoughts at some previous period when his mind was in undoubted health, you will better detect what is morbid than if you set up a general comparison with the thoughts and acts of mankind.' I pass now to her conduct towards her relations—a not unimportant topic. The natural play of the affections gives the last assurance of a mind at ease; and its interruption often the first sign of mental disorder.

" In most cases of exclusive or partial mental illusion the persons affected are abstracted, absent, incapable of applying themselves to any occupation, or even reading with attention; they either forget the objects of their former strongest attachment, or. if they think of them at all, it is only to *accuse them of injustice and cruelty on the most frivolous pretexts or the most improbable suspicion.*

When a general incompetency is established it is presumed to continue, and the burden is upon the party seeking to support the act to show that the party was competent at the time of the performance of the act.

Fisher v. Clarke, 1 Paige, 171;
Smith v. Tibbett. Supra.

The opinions of non-professional witnesses are admissible upon the question of insanity and incompetency. And where the witnesses are conversant with the life of the person in question, his dispositions and habits, and

have been on terms of familiar intercourse with him for years, their testimony is of greater weight than that of scientific witnesses who have not had such opportunities.

The value of such testimony does not depend upon the number of witnesses, but upon their intelligence, means of knowledge and opportunities of observation, and the reasons they give for their opinions.

Harding v. Handy *supra*;
Clarke v. Fisher, 1 Paige, 171;
Hardy v. Merrill, 56 N. H., 227;
Same case, 22 Am. R., 441;
Ins. Co. v. Rodel, 5 Otto, 232;
Beaubein v. Cicotte, 12 Mich., 459;
Rutherford v. Morris, 73 Ills., 367.

CONFIDENTIAL AND ILLEGAL SEXUAL RELATIONS.

Where a transaction is brought about while the parties are living in illegal sexual relations it is always open to suspicion of fraud and undue influence. And if it is a gift, or specially beneficial to one party rather than to the other, the illegal relation is evidence of undue influence, and the burden is upon the party benefitted, to show that no advantage was taken, and that it was the result of free volition, and if he fails to do so the transaction will be set aside on the ground of public policy.

Cooley on Torts, p. 515;
Dean v. Negley, 41 Pa. St., 312;
Leighton v. Orr, 44 Iowa, 679;
Kissenger v. Kissenger, 37 Ind., 341;
Denton v. Franklin, 9 B. Mon., 28;
Davis v. Calvert, 5 Gill and Johnson, 269;
I. Kerr on Fraud and Mistake, pp. 150-1-2 and 183.

In the case of Dean v. Negley, Lowrie, C. J., says: * * * "Lawful influence, such as that arising from legitimate family and social relations, must be allowed to produce its natural results, even in influencing last wills. However great the influence thus generated may be, it has no taint of unlawfulness in it. * * * It is only when such influence is unduly exerted over the very act of devising, so as to prevent the will from being truly the act of the testator, that the law condemns it as a vicious element of the testamentary act; so the law always speaks of the natural influence arising out of legitimate relations. But we should do violence to the *morality of the law*, and therefore to the *law itself*, if we should apply this rule to unlawful, as well as to lawful relations; for we should make them both equal in this regard at least, which is contrary to their very nature. If the law always suspects, and inexorably condemns undue influence, and presumes it from the nature of the transaction, in the legitimate relations of attorney, guardian, and trustee, where such persons seem to go beyond their legitimate functions, and work for their own advantage, how much more ought it to deal sternly with unlawful relations, where they are; in their nature, relations of influence over the kind of act that is under investigation."

* * * * * *

"And the voice of the law on this general subject is distinct and emphatic, transmitted through many generations, and embodied in many Latin maxims." Here follow the maxims in Latin, and the Judge proceeds: "All which may be summed up in one sentence: 'No one shall derive any profit through the law by the influence of an unlawful act or relation.'"

"The ordinary influence of a lawful relation must be lawful, even where it affects testamentary dispositions; for this is its natural tendency. The natural and ordinary influence of unlawful relation must be unlawful, in so far as it affects testamentary dispositions favorably to the unlawful relation and unfavorably to the lawful heirs. Ordinary influence may be inferred in both cases where the nature of the will seems to imply it; but in the former it is right, because the relation is lawful, and

in the latter it may be condemned, together with its effects, because the relation is unlawful."

"There can be no doubt that a long continued relation of adultrous intercourse is a relation of great mutual influence of each over the mind and person and property of the other. History abounds with proofs of it and it requires no very long life or very close observation of persons around us in order to reveal the fact." * * *

"If, then, there was such a relation between Mrs. Bolton and the testator, at the time of the making of the will, as was offered to be proved, we think that the fact taken in connection with the devise to Mrs. Bolton's daughters is evidence of an undue influence exerted by her over the testator, and affecting the dispositions of his will, and that it may justify a verdict against the validity of the will. I have thought myself that it raised a *presumption of law* of undue influence, but we do not so decide but leave it as a question of fact merely."

Leighton v. Orr presents a case so similar in many particulars to the one at bar that we feel justified in making the following extract from the opinion of the court:

"Walcott and the defendant had been living together in illegal sexual relations some years before his death. Both were believers in spiritualism. For the last five or six years of his life Walcott was frequently intoxicated, and was greatly addicted to the use of spirituous liquors. One of the witnesses in describing him says: "He appeared to me as any other man would after he had a debauch—he had the blues."

The Court says; "Whatever influence Mrs. Orr had over Walcott, or however intimate and confidential their relations were, she obtained such influence by unlawful means; by ministering to his passions by adulterous intercourse; their mode and relations in life were disgraceful. Influence obtained by the use of lawful means by a wife or child is eminently right and proper if exercised with proper and honest motives. But the influence obtained by the use of unlawful means, immoral and indecent conduct, is undue influence, and no one should be permitted to derive benefit or advantage therefrom."

The Court then says that such a relation is one of great confidence and influence, and adds: "*It matters not what the relation is if confidence is reposed and influence obtained.*

Transactions based thereon or obtained thereby will be jealously watched and guarded by courts of equity and set aside unless the beneficiary shows the bona fides of such transactions."

Kissenger v. Kissenger is another case much like the present. The parties lived in illegal sexual relations. The testator was weak in mind. The jury found him incompetent upon conflicting testimony, which seemed to preponderate in favor of competency, but the court refused to set the verdict aside, and recites some of the evidences of incompetency which are similar to those in the case under consideration, though not as strong.

In Denton vs. Franklin the question involved was the capacity of the testator, Edmund Talbot, and the undue influence of a colored woman whom he had emancipated in procuring the will.

The court says: "The testator was old and feeble, both in mind and body." * * *

"Indeed, although the few last years of his life he had still some mind left, and was not entirely bereft of reason, yet he seems to have had no will of his own, but to have submitted implicitly to the dictation of a colored woman whom he had emancipated, and whose familiar intercourse with him had brought him into complete and coutinned subjection to her influence."

"The very fact that he undisguisedly yielded to an influence of that character, and lost, under its exercise, apparently all independence of thought and action, leads irresistibly to the conclusion that his mental faculties had given way before the combined operation of age and disease; and that he no longer retained that degree of intellect and mental capacity which would have enabled him to make a valid disposition of his estate by will."

In the case of Davis vs. Calvert, upon the contest of a will, the court below rejected evidence tending to show that the testator maintained illegal sexual relations with the woman to whom and her children he had given his estate. In a very able opinion reviewing this action of the court below it is said:

"Evidence of illicit relations between the testator and a woman to whom and her children the whole estate was given, and that she was a woman of dissolute character, and while inducing the testator, an old and feeble man, to confide in her fidelity, was carrying on lewd in-

tercourse with other men, is admissibe as tending to show undue influence."

"Evidence that the mistress' children were not the testator's in such a case, and that by reason of age and infirmity he was incapable of begetting children, where the will shows that he provided for them under the belief that they were his offspring, is admissible."

It was contended in the court below on behalf of the defence that the consideration of the deeds were past cohabitation, and, therefore, that they were valid. But even if the facts were so, the principle is not conceded. A few isolated cases may be found where sealed instruments have been supported, the consideration of which were *seduction and past cohabitation*, where the parties had ceased to cohabit at the time of the execution of the instrument. But it is respectfully submitted that no authority can be found for sustaining instruments on such considerations where the parties were living together at the time and continued their unlawful relations. In such cases the court will presume that the consideration is tainted with the immorality of future illicit intercourse.

2. Chitty on Cont., p 979 and cases there cited;
Leighton v. Orr, *supra*.

The persons for whose benefit a will or deed is obtained by undue influence or fraud from an incompetent person stand on no better ground than the person committing the fraud.

Huguenin v. Baseley, *supra*;
Davis v. Calvert, *supra*;
Bridgeman v. Green, *supra*.

"Let the hand receiving it be ever so chaste," say the court in Bridgeman v. Green, "yet if it comes through a poluted channel, the obligation of restitution will follow."

CONFIDENTIAL RELATIONS

Where there are fiduciary or confidential relations existing between the donor and donee, grantor and grantee; or the former is for the time being, however, brought about, in the place of ward to the latter, or relies upon his advice, or is in a sate of submission to his judgment or opinion, and especially if the donor or grantor is under any infirmity of mind, a presumption of undue influence arises, and the burden is upon the donee or grantee to rebut it; and the court will look upon such a gift or conveyance with a jealous eye, and strictly examine the conduct and behavior of the person in whose favor it is made; and if it can discover that any acts or strategems, or any undue means have been used to procure the same; if it can see the least speck of imposition, or the least scinctilla of fraud, a court of equity will interpose and set aside the deed or will. This principle applies not only to the relations of attorney and client, guardian and ward, principal and agent, physician and patient, but to all the relations of life where dominion may be acquired by one person over the mind or actions of another.

Cooley on Torts, page 516;
Taylor v. Taylor, 8 How. (U. S.), 183;
Wheeler v. Smith, 9 How. (U. S.), 55;
Davis v. Calvert, 5 G. & J., 302;
Williams v. Williams, 63 Md., 371, and cases and authorities there cited;
Jacox v. Jacox, 40 Mich., 401;
Same case, 29 Am. R., 547;
Whelan v. Whelan, 3 Cowen, 583;
Miskly v. Miskly, 107 Pa. St., 611;
Lyon v. Home, 6 Eq. Cas., (L. R.), 655;

Huguenin v. Basely, 14 Ves. Ch., 273, 3 L'd'g Case. Eq. (A. & W.). 94 and notes;
Bridgman v. Green, 2 Ves., 627;
Dent v. Bennett, 4 Mylne & Cr., 269;
Norton v. Reilley, 2 Eden, 286;
Nottidge v. Prince, 6 Jur. (N. S.), 1066;
Darlington's Appeal, 86 Pa. St.;
Same case, 27 Am. R., 797;
Boyd v. De La Montagnie, 73 N. Y., 498;
Same case, 29 Am. R., 197;
Rockafellow v. Newcomb, 57 Ills., 186;
Couts v. Ackworth, (L. R.), 8 Eq., 558;
Sears v. Shaffer, 6 N. Y.. 268;
Waterman v. Whitney, 11 N. Y., 165.

The case of Huguenin v. Basely and the notes to it in 3d Leading cases in Equity, and the authorities there cited are an exhaustive discussion of the whole subject.

Huguerin v. Baseley was a case where deeds were made by Mrs. Huguenin to Basely, her clergyman, for the benefit of himself and family. The lady executed the deeds not long after the death of her first husband, but before her second marriage. Basely had become her agent to a certain extent, and was looking after her affairs, and the evidence shows that she relied considerably upon his judgment. Lord Eldon, who decided the case, states in his opinion that the lady herself called upon Basely and desired him to assist her in relation to her property. There was no pretense in the case that Mrs. Huguenin was in any degree incompetent to transact her business, but that shedesired some one to look after it for her, and secured Basely's services for that purpose.

The fact that there was no power of revocation in the deed is adversely commented upon by the Lord Chan-

cellor, and he states that it is strong evidence that she did not understand this transaction, and furnishes an inference of undue influence. Again he says:

"*The question is not whether she knew what she was doing, had done, or proposed to do; but how the intention was produced; whether all that care and providence was placed round her, as against those who advised her; which from their situation and relation with respect to her, they were bound to exert on her behalf.* * * * * * * *

In the notes to Huguenin v. Basely. above referred to there is the following, taken from Houghton v. Houghton, 15th Beav.; 298:

"In many cases the Court, from the relations existing between the parties to the transaction, infers the probability of undue influence having been exerted. And in such cases the Court watches the whole transaction with great jealousy, not merely for the purpose of ascertaining that the person likely to be so influenced fully understood the act he was performing, but also for the purpose of ascertaining that his consent to perform that act was not obtained by reason of the influence possessed by the person receiving the benefit; not that the influence itself flowing from such relations is either blamed or discountenanced by Court, on the contrary, the large exercise of it is considered useful and advantageous to society, but this Court holds that as an inseparable condition that this influence should be exerted for the benefit of the persons subject to it, and not for the advantage of the person possessing it."

In the case of Taylor v. Taylor, 8th Howard, a deed from a young lady just of age to her mother, and other sisters, for property which she had received as a bequest from a deceased uncle, was set aside on the ground of undue influence inferred from the relation subsisting between the parties to the instrument. The Court, in its opinion, referring to the allegations of undue influence in the bill, says:

"Although these allegations are not supported by direct statements of witnesses, yet the intrinsic evidence

flowing from the conduct of the parties to these transactions, and that presented by the written documents in this cause imparts to the above allegations a force equal, if not suppassing that which an explicit narrative by witnesses could give them."

The case of Williams v. Williams, recently decided in the Court of Appeals of Maryland is very much in point. That was a conveyance by a son twenty-five years of age to his father, who was a trustee under a will by the provisions of which the son derived most of the estate conveyed. The deed conveyed the property in trust to the father, to manage and pay the grantor $2,000 per annum out of the profits during his life, and after his death to convey the entire estate of the grantor and its accumulations to his right heirs living at the time of his death. The son was eccentric, greatly addicted to the use of intoxicating liquor, and to a considerable extent weakened in intellect.

The court below set aside the deed on the ground of undue influence, which was inferred from confidential relation of the parties, and the somewhat enfeebled condition of the grantor. The evidence of incompetency and undue infiuvnce in that case was not nearly as strong as it is in the present case, and the confidential relation of the parties here is as absolutely established as it was there. The case was very elaborately argued in the Court of Appeals, and the decree affirmed, two judges out of five which heard it, dissenting, however, but for reasons which do not exist in the present case.

Judge Miller, in his dissenting opinion, speaking of presumptions arising from transactions between persons in confidential relations, says:

"The relations, however, of parent and child, and trustee and *cestui que trust*, did undoubtedly exist, and it has

been earnestly argued that this fact draws the deed within the familiar principle of equity in reference to transactions between parties standing in fiduciary relations. Lord Penzance has stated this equitable doctrine thus: In equity persons standing in certain relations to one another—such as parent and child, man and wife, doctor and patient, attorney and client, confessor and penitent, guardian and ward—are subject to certain presumptions when transactions between them are brought in question; and if a *gift or contract made in favor* of him who holds the position of influence is impeached by him who is subject to that influence, the courts of equity cast upon the former the burthen of proving that the transaction was fairly conducted as if between strangers; that the weaker was not unduly impressed by the natural influence of the stronger, or the inexperienced overreached by him of more mature intelligence." Parfitt v. Lawless, Law Rep., 2 Prob. & Div., 462.

"It has been often said that this is a salutary doctrine, and the tendency of the more recent decisions, no doubt, is to extend its application to all the variety of relations in which dominion may be exercised by one person over another, and to every transaction whereby he who possesses the influence receives any pecuniary benefit from him who is subject to the influence. The cases in this State are to the effect that a gift obtained where a confidential relation exists, is *prima facie* void, and the burden is on the donee to establish to the full satisfaction of the court that it was the free, voluntary and unbiased act of the donor. Brooks v. Berry, 2 Gill, 83; Highberger v. Stiffler, 21 Md., 338; Grove v. Todd, 33 Md., 188; Pairo v. Vickery, 37 Md., 467; Cherbonnier v. Evitts, 56 Md., 276. But it would seem to be clear that there must be some gift, or conveyance, or some bargain, purchase or other business transaction, by means of which the party holding the position of influence acquires property or obtains some pecuniary advantage or benefit, in order to bring this equitable rule into operation. It can not in reason be applicable where the deed simply settles the estate and property of the grantor upon *himself for life*, and after his death transmits it to *his own heirs-at-law*."

In Whelan v. Whelan, Woodworth, J., in delivering the opinion of the court, says:

"Whether undue influence has been used, is an inference from the facts alleged and proved."

Miskly's appeal decided in the Supreme Court of Pennsylvania in 1883, is another case very much in point. In that case it was held:

"Where a voluntary deed is made by a son to his father, the rule which requires one who stands in a relation of trust and confidence to another, and who takes a benefit from the deed of that other, to show, in order to sustain the deed when impeached, that it was not the result of undue influence, and that the grantee had competent means of forming an independent judgment, applies."

* * * * * * *

The evidence in that case in relation to the mental and bodily condition of the grantor, and the manner in which it was produced, was almost identical with that in this case. Judge Green, delivering the opinion of the court, refers to his condition in the following language:

"The grantor being at the time (of making the deed) and for many years previously, a man of grossly intemperate habits, in an almost constant state of intoxication, with mind and body greatly impaired and enfeebled thereby." He quotes from the opinion of Sharswood, C. J., in Jones' Appeal, 39 Leg. Int., 52, as follows: "It is sufficient to invalidate any instrument by a person of weak intellect to show that the person in whose favor it is framed held a situation of confidence with respect to the maker of such instrument." The person taking the conveyance in that case claimed to be a wife although there was some question whether thre was a legal marriage.

The case of Lyon v. Home, was a suit by Mrs Lyon to set aside deeds made by her to the defendant on the ground of undue influence obtained over her by the means of spiritualism, in which both were believers.

After deciding that where a relation of confidence exists between the grantor and grantee the burden is upon the latter to show that the transaction is fair and proper, the judge, delivering the opinion, says:

"I will not narrow the rule by any enumeration of the description of persons against whom it ought to be most freely exercised. * * * * *
The relief stands upon a general principle applying to all the variety of relations in which dominion may be exercised by one person over another. * * *
It may be the impulse of a mind misled by undue kindness. * * * If the court does not watch these transactions with a *jealousy almost invincible*, in a great majority of cases it will lend its assistence to fraud. * *

"In cases of forgery proof of ratification is important, but, in cases of undue influence it proves nothing—the same power which produces one produces the other—instead of removing the imputation, it is rather an additional evidence of it."

In Dent v. Bennett, a physician obtained a bond from his patient, 85 years old, to pay him £25,000 after death of the patient, expressed to be for past kindness and medical attendance of the future. The Lord Chancellor Cottenham said:

"Those who meddle with such transactions take upon themselves the whole proof that the thing is righteous.

"The reason for a contract instead of a will is obvious —the one could be changed—the other not.

"'The relief'—as Sir S. Romily says in his celebrated reply in Huguenin v. Basely, (from hearing which I received so much pleasure that the recollection of it has not been diminished by the lapse of more than 30 years) —'the relief stands upon a general principle applying to

all the variety of relations in which dominion may be exercised by one person over another.'"

In Nottidge v. Prince (a case of gift by one religious fanatic to another), Stuart, V. C., says:

"No person who stands in the relation of a special confidence to another, so as to acquire habitual influence over his mind, can accept any gift from such person, without danger of having it set aside. The doctrine extends to attorney and client, guardian and ward, parent and child."

In Darlington's Appeal, Joshua Darlington obtained from his wife, a voluntary conveyance of her maiden land. After the death of both, the heirs of the wife brought this suit against the heirs of the husband to set aside the deed for undue influence.

The Court says:

"It is probable as a fact as well as a legal presumption that she (Mrs. Darlington) knew the contents of the deed. No act was done or admitted to vitiate the acknowledgment, It seems she was not too imbecile to make a contract, but was dull of hearing, defective in speech, of infirm health, and mentally weak. * * *

The master says that there is no evidence that he (her husband) exerted undue influence over his wife to induce her to convey the land. * * * Without especially noting the inferences of the master, it is enough that there is no *affirmative evidence* that it was the purpose of that woman, free from her husband's undue influence, to give him the land."

In Boyd v. De La Montagnie, a husband induced his wife to assign to him a lease which was her property, under the erroneous impression that if she did not it was supposed she was liable. Suit brought by her executrix against the husband to set aside the transfer. Church, C. J: "It is not found that the defendant acted with fraudulent intent in procuring the transfer, but I do not

understand that this is necessary to be shown in this class of cases. A court of equity will interpose its jurisdiction to set aside instruments between persons occupying relations in which one party may naturally exercise an influence over the conduct of another. * * *

When this relation exists, the person obtaining the benefit must show, *by the clearest evidence*, that the gift was freely and deliberately made, and the transaction fair and proper. Story says: "Hence, the law, with a wise providence, not only watches over all the transac tions of parties in this predicament, but it often interposes to declare transactions void. which, between other persons, would not be held objectionable." Sto. Eq. Jur., § 310.

In Couts v. Ackworth, the court says: "The party taking a benefit under a voluntary settlement or gift. containing no power of revocation, has thrown upon him the burden of proving that there was no deception or undue influence. In such cases it is the duty of the solicitor to insist upon the insertion of a power of revocation."

It seems that the present case furnishes much stronger reasons for the interposition of the court than any of those cited.

W. A. COOK,
C. C. COLE,
Attorneys for Appellees.